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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 344 OF 2002

1. Sandeep Azrenkar, r/o Margao, Salcette, Goa.

2. Goa Foundation, a Society registered under the Societies Registration Act, 1960, through its Secretary, Dr. Claude Alvares, and having its registered at Rm. 7, La Brag Chambers, above Mapusa Clinic, Mapusa, Goa. ... Petitioners

Versus

1. State of Goa, through Chief Secretary, Government of Goa, Secretariat, Panaji-Goa.

2. The Chief Conservator of Forests, Forest Department, Behind Old Goa Medical College Complex, Campal, Panaji-Goa.

3. The Dy. Collector (& SDO), North Goa Collectorate, Panaji-Goa.

4. The Secretary, Ministry of Environment & Forests, Paryavaran Bhavan, C.G.O. Complex, Lodi Road, New Delhi 110 003.

5. The Panchayat of Se Old Goa, through its Sarpanch, Ela, Goa.

6. Shri Satish Bhandari, r/o Dotor Bhat, Opp. Pinto Service Station, Old Goa.

7. The Chief Town Planner, Town and Country Planning Dept., Old Goa Medical College Complex, Campal, Panaji, Goa.

8. Shri Babaram C. Ugvekar, Navelkar Estate, Bldg. No.14, B2, Baiginim, Old Goa.

9. Shri Mathews / Smt. Piedade Rodrigues, Grand Xencra Bhatt, Neura, Ilhas, Goa.

10. Smt. Betilda D'Cunha, Molalr, Corlim, Tiswadi, Ilhas, Goa.

11. Shri Shrikant P. Borkar, Barbosa Bldg., 2nd floor, Patrong, Baina, Vasco-da-Gama, Goa.

12. Shri Santosh S. Kundaikar, Sameer Bldg., 1st floor, Tivrem, Marcel, Goa.

13. Shri Mohandas N. Malkarnekar, B.P.D., 5/3, Alto Betim, Bardez, Goa.

14. Shri Raja Gudusab S. Pathan, Housing Board Colony, Rm. No. 8 Corlim, Ilhas, Goa.

15. Shri Chandrakant B. Halarnkar, Behind Archaeological Survey of India, House No.20, Old Goa.

16. Smt. Famida Chansab Kazi, Katya Bhat, Old Goa.

17. Smt. Rizwana M. Rafiq Mulla, House No.D-281/49/1, Plot No.56, P.D.A. Colony, Corlim, Tiswadi, Goa.

18. Shri Ravi / Shri Soma Naik, House No.62, Near Mahalaxmi Temple, Panaji, Goa.

19. Shri Advavi Rao Desai, Vishnu Niwas, Pai Building, Near Neura Road, Ela, Old Goa.

20. Shri Kashinath Govind Desai, Near Shirvaikar Garage, St. Inez, Panaji, Goa.

21. Smt. Priti P. Amonkar, House No.E/6/2, Panvel, Ribandar, Ilhas, Goa.

22. Shri Dhiraj/Shri Niraj/Smt. Varsha Wagle, Manguirish Apts., 2nd flr., 18th June Road, Panaji, Goa.

23. Smt. Maria P. Sequeira D'Costa, Fram Apts., 1st floor, B-Block, Old Goa.

24. Smt. Rosaria De Souza e Fernandes, House No.699, Manquerial Ward, St. Estevan, Ilhas, Goa.

25. Shri Madhukar N. Raikar, Asst. Rector Quarters, Polytechnic Boys Hostel Campus, Altinho, Panaji, Goa.

26. Smt. Wilma S. Fernandes, House No.68, Portel Bhat, Goa-Velha, Batim, Goa.

27. Smt. Socorrina V. M. Mascarenhas, Madkai, Adon Waddo, P.O. Mardol, Goa.

28. Shri Diogo, A. D'Costa, A-S3, Vijaynagar Housing Society, Corlim, Ilhas, Goa.

29. Smt. Bharati Gaonkar alias Bharati Y. Sathaye, Vidyanagar Housing Society, Corlim, Tiswadi, Goa.

30. Smt. Santa V. Mendes, House No.1076, Madel, Chorao, Ilhas, Goa.

31. Smt. Milagrina D. Andrade, Corlim, Mollar, Ilhas, Goa.

32. Smt. Shasvat K. Naik, C-2, S-1, Navelkar Estate, Baiguinim, Old Goa.

33. Smt. Elsie D'Souza, Bela Vista, Corlim, Ilhas, Goa.

34. Shri Devshankar S. Prasad, Church Complex, Old Goa.

35. Smt. Shakuntala S. Vernekar, House No.351, Near Mahalsa Temple, Mardol, Goa.

36. Smt. Teresa O. Pinto, Plot No.7, Cari Bhat, Carambolim, P.O. Corlim, Goa.

37. Shri Jose C. Rodrigues, Francis Pereira Ward, House No.126, Utorda, P.O. Majorda, Salcete, Goa.

38. Goa Tamil Sangam, S.K. Abdul Samad, Flat No.E-1-3, Govt. Polytechnic Qtrs., Altinho, Panaji, Goa.

39. Shri Miguel Caitano Saldanha, H.No.526, Near Church, Marcel, Goa.

40. Smt. Sacrament Rodrigues, Fondvem, H.No.300, Ribandar, Goa.

41. Shri Agnelo P. Rebelo, H.No.220/1, Mollar, Corlim, Ilhas, Goa.

42. Smt. Amalina Vaz, Madkaikar Plaza, Block No.C, 1st floor, Ilhas, Goa.

43. Smt. Luiza Maria Dias, Madkaikar Plaza, Building "C", 2nd floor, Corlim, Ilhas, Goa.

44. Shri Rolin/Agnes Joseph Fernandes, C/o Joseph Fernandes, 2/20, Christ Villa, Ghodupes Road, Mazgaon, Mumbai 400 010.

45. Shri Thomas Gracias, Reiguini Bandora, E-10, Ponda, Goa.

46. Savio Silveira, Palmar Vaddo, St. Estevam, Goa.

47. Shri Babu Bhagwan, Dotorbhat, Ela, Old Goa.

48. Shri Chandrakant Kalsekar, G/2, B-5, Vijay Nagar, Corlim, Ilhas, Goa.

49. Shri Jayant Tari, Manas Waddo, Kundaim, Goa.

50. Shri Zacarias Braganza, 291, Molok Waddo, Merces, Ilhas, Goa.

51. Shri Sajan Vernekar, H. No. D-28, Dhavji, Old Goa.

52. Esperance Fernandes, 562, Mandur, Dongri, Neura, Ilhas, Goa. ... Respondents

WITH
MISCELLANEOUS CIVIL APPLICATION NOS. 370, 372, 373 & 404 OF 2008
IN
WRIT PETITION NO. 344 OF 2002

Shri Babaram Chintamani Ugvekar & Others ... Applicants

Versus

Shri Sandeep Azrekar & Another ... Respondents

Ms. Norma Alvares *with Mr. Om D'Costa, Advocates for the Petitioners.*

Mr. Pravin Faldessai, *Additional Government Advocate for Respondent Nos. 1, 2, 3 and 7.*

Mr. S.D. Patil, *Advocate for Respondent No. 4.*

Mr. J.E. Coelho Pereira, *Senior Advocate with Mr. J. Godinho and Mr. Sagar Rivonkar, Advocates for Respondent No. 6.*

Mr. S.D. Lotlikar, *Senior Advocate with Ms. Sailee Kenny, Advocate for Respondent Nos. 9, 10, 12 to 15, 19, 21, 23, 24, 30 to 34, 39 to 41, 44, 46, 49 and 52.*

CORAM: B.P. COLABAWALLA &
BHARAT P. DESHPANDE, JJ.

RESERVED ON : 17th FEBRUARY 2023

PRONOUNCED ON :29th FEBRUARY 2024

JUDGEMENT: [PER: BHARAT P. DESHPANDE, J].

1. At the outset, we would like to mention that during the course of dictation of this judgment, we had a query. We therefore kept the matter on board for directions [through a VC hearing] on 22nd February 2024. This was because one of us (B. P. Colabawalla, J.) is currently sitting at the principal seat of this Court. On that date, our query was resolved. Since the judgment was originally reserved on 17th February 2023, we, on 22nd February 2024, also enquired from the respective parties whether they have anything further to add or should we proceed with our judgment. All parties before us stated that they had nothing further to add as they have given their written submissions, and they had no objection if we proceed to pass our judgment. We have accordingly proceeded to pronounce judgment today.

FACTS:

2. By way of the present Petition, Petitioner Nos. 1 and 2, claiming to be Environmentalist associated with NGOs, inter alia challenge the conversion sanad granted by Respondent No. 3 dated 04.04.2000 in favour of Respondent No. 6, in connection with Survey No. 100/0 of Ella village in Tiswadi Taluka (for short ***"the said land"*** or ***"the said property"***), as well as all actions subsequent thereto. This challenge is laid on the premise that the said property is forest land and no permission from the Central Government under the Forest (Conservation) Act, 1980 was obtained before the grant of such sanad.

3. In a nutshell, the Petitioners' main contention is that the Forest (Conservation) Act, 1980 is applicable to the said land, which is, in fact, a hilly terrain in Ella village, Panchayat Se Old Goa, having forest trees. It is the case of the Petitioners that Respondent No.6, being the owner of the said land, in collusion with Respondent Nos. 1, 2 and 5, cut the forest trees without any permission, converted the use of the said land to a non-forestry purpose, and obtained the sanad for the purpose of developing the said land into residential plots. While doing so, Respondent No. 6 submitted false information that only 23 trees existed on the said land [while applying for permission to cut the same from the Tree

Officer], and under the guise of such permission, in fact, removed/felled 609 forest trees and 15,000 bamboos. Similarly, the remaining portion, wherein trees were existing, was cleared by burning of trees in order to destroy the entire forest. It is the case of the Petitioners that the area of Survey No. 100/0 (said land) is 7 hectares and the entire area was covered by a thick forest. Though it is private land, permission from the Central Government was a must, before obtaining the sanad for conversion of the said land. It is the main contention of the Petitioners that the said land is a forest and the Range Forest Officer, the Deputy Conservator of Forest, along with other Forest Officers, have categorically observed that the said land fulfills all the criteria for being identified as a private forest.

4. It is the contention of the Petitioners that after the felling of many forest trees and bamboos, the Deputy Conservator of Forest visited the site and conducted a panchanama and thereafter, lodged a complaint under the *Goa, Daman and Diu Preservation of Trees Act, 1984* against Respondent No. 6. By the said complaint, the Court was informed of the number of trees felled and that the area was cleared illegally. Respondent No. 6, being the accused, pleaded guilty and accordingly, he was sentenced to pay a fine of Rs.1,000/.

5. It is on this basis that the Petitioners seek the following reliefs in the above Petiton:-

> "(a) Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction quashing the sanad No.CNV/TIS/15/2000 dated 4.4.2000 issued by Respondent No.3 in favour of Respondent No.6;
>
> (b) Issue an order directing the Respondents to restore the property to its original condition;
>
> (c) Issue a Writ of Prohibition, or a Writ in the nature of Prohibition, prohibiting the Respondent No.6 from carrying out any development works in the above-mentioned property, without prior approval of the Central Government under the Forest Conservation Act, 1980;
>
> (c-i) For an order or order in the nature of a writ quashing and setting aside the circular (No.16/11/90/RD) dated 23.6.1997;
>
> (c-ii) Pending hearing and final disposal of this petition, stay of the operation of the circular (No.16/11/90/RD) dated 23.6.1997;
>
> (d) Pending hearing and final disposal of this petition, stay any further developmental works sin respect of the property;
>
> (e) Pending hearing and final disposal of this petition, for an order restraining the Resp.No.3 from renewing or issuing any fresh sanad for the said plot;
>
> (f) Pending hearing and final disposal of this petition, for an order restraining the Resp. No.5 from granting any construction licence for any development or construction on the said plot;
>
> (g) Interim relief in terms of prayers (d-f);

(h) For costs of this petition;

(i) For any other reliefs this Hon'ble Court may be pleased to grant."

6. During the pendency of the present Petition, the amended prayers (c-i and c-ii), which relate to the circular dated 23.06.1997, became infructuous as a statement was made before this Court that such circular has been withdrawn by the Government.

7. The main challenge that now remains is against the sanad (Exhibit-A) dated 04.04.2000, which was issued by Respondent No.3 under the provisions of the *Goa, Daman and Diu Land Revenue Code.*

8. It is an undisputed fact that Survey No. 100/0 of Ella village (the said land) is bounded on the north by Survey Nos. 50 and 59; on the west by Survey No. 98; towards the south by Survey Nos. 101, 102 and 103; and on the east by Survey No. 104, which abuts National Highway 17 (NH-17). In the survey records, the said land of Respondent No.6 [Survey No. 100/0] was partly in a settlement area to the extent of 5,254 square metres as originally indicated in the Outline Development Plan (ODP). Similarly, the property bearing Survey Nos. 101, 102 and 103, which are adjacent to the said property of Respondent No. 6 are admittedly in the settlement zone

and abutting NH-17 wherein a number of multi storeyed buildings and bungalows exist.

9. We have extensively heard the learned Counsel Ms. Norma Alvares appearing for the Petitioners, the learned Additional Government Advocate Mr. Faldessai for Respondent Nos. 1, 2, 3 and 7, learned Senior Counsel Mr. Coelho Pereira for Respondent No. 6 – owner of the said land, and learned Senior Counsel Mr. Saresh Lotlikar, who appears for Respondent Nos. 9, 10, 12 to 15, 19, 21, 23, 24, 30 to 34, 39 to 41, 44, 46, 49 and 52 – the owners of the individual plots on the said land.

SUBMISSIONS OF THE PETITIONERS:

10. Ms. Norma Alvares would submit that the granting of a conversion sanad dated 04.04.2000 [in respect of Survey No. 100/0 of Ella village/said land] is totally illegal and without following the due procedure as laid down under the Forest (Conservation) Act, 1980. Her main contention is that the said land is a forest land, and for conversion of any forest land for any non-forestry purpose, without prior approval of the Central Government [i.e. the Ministry of Environment and Forest], is illegal. She would submit that there is no document placed on record by Respondent No. 6 to show that before obtaining the sanad dated 04.04.2000,

any such permission from the Central Government [as provided under the Forest (Conservation) Act, 1980] was obtained. She would submit that Respondent No. 6 deliberately, and in connivance with the Officers of the Goa Government, suppressed the material fact that the said land is in fact a forest, having and fulfilling all the criteria for a declaration of such land as forest land, and fraudulently obtained the conversion. While doing so, Respondent No. 6 illegally felled hundreds of various trees, cleared large scale stumps by burning the said land, sub-divided it into plots, and sold some of them to different persons, who are specifically joined as Respondent Nos. 8 to 52 to this Petition.

11. Ms. Alvares then submitted that from the beginning, all the Officers of the Forest Department of the Government of Goa consistently observed that the said land is fulfilling the criteria of a forest and therefore, the Forest (Conservation) Act, 1980 is applicable for doing any development, or for converting it for a non-forest purpose. This fact was known to Respondent No. 6 when he applied for clearing of some of the trees and also whilst executing an indemnity bond in November 1996. It is for this reason that Respondent No. 6 undertook to replant the trees which he would cut. He also undertook not to develop the said land for residential purposes. However, within a few years, Respondent No. 6 applied

for a conversion sanad and for sub-division of the said land into plots. Due to the circular issued by the Government of Goa in the year 1997 [doing away with the practice of consulting the Forest Department before issuing a sanad], the concerned Officer processed such Application of Respondent No. 6 and eventually granted the sanad without taking permission from and/or consulting the Forest Department.

12. Ms. Alvares submitted that Respondent No. 6 knew that his land is, in fact, a forest and was aware that permission for felling of trees for the purpose of development of said land would not be granted by the Forest Department. He, therefore, took the law into his own hands, and somewhere in January 2001, illegally felled around 609 trees and 15,000 bamboo and cleared the area by burning. On receipt of a complaint from some local persons, the Forest Department visited the spot and conducted a panchanama on 14.02.2001 and observed that many forest trees were cut without prior permission. Accordingly, the Deputy Conservator of Forest lodged a complaint before the learned Magistrate on 12.02.2002 claiming that Respondent No. 6 has illegally felled forest trees which is an offence under the *Goa, Daman and Diu Preservation of Trees Act, 1984*. On receipt of summons from the Magistrate, Respondent No. 6 appeared and pleaded guilty, thereby admitting

the facts mentioned in the complaint, and more so, admitting that his land is a forest land.

13. Ms. Alvares submitted that in response to the directions passed by the Hon'ble Supreme Court in the case of ***T. N. Godavarman Thirumulkpad Vs. Union of India*** **[(1997) 2 SCC 267]**, the Government of Goa, on 24th January 1997, constituted an Expert Committee under the chairmanship of Shri Sadanand M Sawant for identification of forests in the State of Goa. This Expert Committee ("***the Sawant Committee***") thereafter prepared their report dated 8th December 1999 and submitted it to the Government of Goa. Ms. Alvares submitted that since the report of the *Sawant Committee* was not considered conclusive, the Government of Goa appointed another Committee headed by Mr. Karapurkar ("***the Karapurkar Committee***"), who tried to reconsider the lands which were visited and inspected by the *Sawant Committee.* In these circumstances, Petitioner No. 2 approached the Apex Court by filing a PIL in March 2001, alleging that the Karapurkar Committee is carrying out the work contrary to Sawant Committee's final report. In this PIL, State Government gave an assurance to the Apex Court that the Karapurkar Committee was working towards identifying additional areas so as

to complete the task that remained incomplete by Sawant Committee.

14. She therefore submitted that the report of the *Karapurkar Committee* is also of no importance since they only inspected portions of land which were left out by the *Sawant Committee.* Even otherwise, the report of the *Karapurkar Committee* is also not conclusive. She then submitted that the Government of Goa appointed another Committee [in view of the order passed by the National Green Tribunal (NGT) dated 07.01.2000] chaired by Deep Shikha Sharma (**"the *Deep Shikha Sharma Committee*"**), to review private forest lands identified by earlier Committees, namely, the *Sawant Committee* and the *Karapurkar Committee.* The *Deep Shikha Sharma Committee* gave its findings, which are reflected in the order of the NGT, West Zone Bench, dated 18.08.2020. She submitted that though the NGT accepted the report of the *Deep Shikha Sharma Committee,* the same is not final since in this petition a separate Committee was appointed specifically to find out whether said land is/was a forest.

By the time the KC was appointed the trees were felled area deforested

Deepshika Com is final

15. Ms. Alvares submitted that the said land of Respondent No.6, though not identified as a forest by any of the earlier Committees, would certainly fall within the criteria of a forest land as laid down from time to time, and therefore, even though, the property was

felled, developed into plots, and sold to different persons, would not affect its original status as a forest. Consequently, she would submit that once this is the case, then the conversion sanad is required to be quashed and set aside as no permission from the Central Government was obtained for conversion of use of the said land for a non-forestry purpose.

16. In support of her contentions, she placed reliance on the following decisions:

> *(i) Keshav Mills Co. Ltd. & Another Vs. Union of India & Others, (1973) 1 SCC 380;*
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> *(ii) Goa Foundation, Mapusa & Others Vs. State of Goa & Others, 2001 (3) Mh.L.J.;*
>
> *(iii) Shri Shivanand V. Salgaocar Vs. Tree Officer & Deputy Conservator of Forests & Another (W.P. No. 162/1987 dated 27.11.1990);*
>
> *(iv) T.N. Godavarman Thirumulkpad Vs. Union of India & Others, (1997) 2 SCC 267 and*
>
> *(v) M.C. Mehta Vs. Union of India & Others, (2018) 18 SCC 397.*

17. Ms. Alvares lastly submitted that now it has been put beyond the realm of doubt that the said land belonging to Respondent No.6 is a forest land. She submitted that during the pendency of the above Writ Petition, this Court, with the consent of parties, on

16.08.2006, constituted a Committee of experts [for short "***the Court Committee***"] to examine and report to the Court as to whether or not the said land of Respondent No.6 [Survey No. 100/0 of Ella Village] was a forest land but stood degraded denuded or cleared. She submitted that this *Court Committee* has filed a report in this Court dated 14.12.2006 and observed that Respondent No.6's land bearing Survey No. 100/0 of Ella Village [admeasuring 7.69 Hectares] is a forest. Ms. Alvares submitted that once this is the finding of the *Court Committee*, the conversion sanad dated 04.04.2000, and which is challenged in the above Writ Petition, cannot stand, and has to be quashed and set aside. This is for the simple reason that the conversion sanad grants permission to Respondent No.6 to convert his land for a non-forestry purpose without the permission of the Central Government as mandated by the provisions of the Forest (Conservation) Act, 1980. Consequently, she submitted that the Writ Petition must succeed.

18. As far as the rights and/or interests of Respondent Nos.8 to 52 are concerned, Ms. Alvares submitted that in the above Writ Petition, on 28.10.2002, this Court passed an order inter alia staying further development work on the said land and restrained Respondent No.3 from renewing or issuing any fresh sanad for the said land. Thereafter, on 17.06.2003, this Court noted that some

purchasers had started construction on the said land and all those purchasers were not before this Court. Accordingly, Respondent no.5 was directed to issue stop order notices against all construction until further directions from this Court. However, if any person had a license and was constructing pursuant to such license, liberty was granted to the said person to move this Court. Ms. Alvares submitted pursuant to this liberty, only three parties i.e. Respondent Nos. 12, 32 and 35 applied to this Court for permission to carry out construction and obtain an occupancy certificate. Since these three Respondents produced all legal documents, their plots could be protected but not the plots of the rest of the Respondents. Some of the plot owners/Respondents illegally constructed structures, without obtaining permission from this Court and thus, such structures must go from the said land in order to restore it as a forest. She submitted that in order to protect the plot owners, Respondent No. 6, who is the owner of the said land, be directed to refund the amounts which he received from such Respondents towards the sale of the plots to them. She would submit that the cut-off date for this purpose could be reckoned as 28.10.2002 when this Court granted an ad-interim stay and restrained the Respondents from carrying out further development on the said land. Thus, the remaining plot owners, who illegally constructed the structures on their plots, if any, require no protection from this Court as they were

aware of the pendency of these proceedings and the ad-interim/interim orders passed by this Court.

SUBMISSIONS OF THE RESPONDENTS:

19. Per contra, Mr. Faldessai, the learned Additional Government Advocate, appearing for the Government Departments, and more specifically the Forest Department, contended that the said land of Respondent No. 6 fulfills the criteria of a forest and the Chief Conservator of Forest along with other Officers of the Forest Department, from time to time, clarified that the Forest (Conservation) Act, 1980 is applicable. He would submit that though the sanad was granted by the Deputy Collector, the same was not renewed further. In answer to our query as to whether a sanad for conversion of land is for any specific period, he was unable to give any answer. Further, he fairly submitted that though the circular dated 23.06.1997 issued by the Government of Goa was withdrawn, whilst granting the permission for conversion of the use of said land, the Head of the Forests Department was a member of the Board constituted under Section 4 of the Town and Country Planning Act, 1974, and which granted the said conversion. It is after this permission that the conversion sanad was issued by the Member Secretary of the said Board.

Forest Dept fulfils criteria

20. Mr. Coelho Pereira, the learned Senior Counsel appearing for Respondent No. 6, vehemently opposed the above Writ Petition on merits as well as on delay and laches. First of all, he submitted that the Developer who has entered into agreements for sale with various parties in connection with the plots sold to them, is not made a party to the present proceedings. Respondent No. 6 entered into an agreement for development of the said land with the Developer and this fact is very well known to the Petitioners, who have produced the agreements for sale and the sale deeds of the respective Respondents. The sale proceeds were also received by the Developer and not by Respondent No. 6 alone. Therefore, the question of refund of money as tried to be projected on behalf of the Petitioners, would be impossible as the Developer is not a party before this Court.

21. Mr. Pereira then submitted that the conversion sanad was granted in the year 2000 by following the due procedure including publication of notice in the newspapers. The Petitioners claim to be active Environmentalist and did not challenge or raise any objection after such publication. Similarly, after the grant of conversion, preliminary developments on the said land were carried out by constructing roads, demarcation of plots etc. which was also known to the Petitioners, but no objection was raised. He

submitted that as per the Town and Country Planning Act, 1974, a Board was constituted under Section 4 for the purpose of grant of conversion of the use of the land for a settlement zone. One of the Members of this Board is the Head of the Forest Department. Therefore, according to Mr. Pereira, while considering the case of Respondent No. 6 for grant of conversion, the Board, having one of its Members as the Head of the Forest Department, verified the papers and consented to grant permission for conversion. The Head of the Forest Department never raised any objection that the said land is a forest and permission from the Central Government is necessary. Had the said objection been taken at the relevant time, Respondent No. 6 would have either applied and obtained permission from the Central Government or would have been able to satisfy the Board that the said land of Respondent No.6 does not fulfill any of the criteria for being classified/notified as a forest. Therefore, according to Mr. Pereira, Respondent No. 6 complied with all the legal formalities before obtaining the sanad for conversion of the said land and thereafter, also obtained further permissions for sub-division of the said land and sale of the plots. According to him, the Petitioners were totally silent till the year 2002 and therefore, the Petition suffers from delay and laches as well as for non-joinder of the Developer.

22. As far as the merits are concerned, Mr. Pereira would submit that all the Committees constituted by the Government of Goa, including the *Sawant Committee*, the *Karapurkar Committee*, the *Thomas Committee*, the *Araujo Committee* and the *Deep Shikha Sharma Committee* did not identify the said property of Respondent No. 6 as a forest land. He would submit that *Sawant Committee* experts visited most of the villages in the State of Goa including village Ella but did not identify Survey No. 100/0 [the said land of Respondent No.6] as a forest land. Mr. Pereira submitted that the report of the *Sawant Committee* was finally submitted in the year 1999 wherein some survey numbers in village Ella were identified as private forests, but not the said land of Respondent No. 6. This, therefore, completely belies the case of the Petitioners that the said land is a forest land. He submitted that it is important to note that village Ella is not situated in a remote area and/or an inaccessible place. The said property is near NH-17 and situated close to Old Goa, which is a tourist place.

23. This apart, Mr. Pereira submitted that the wordings mentioned by some of the Officers of the Forest Department in connection with Survey No. 100 of Ella village, is that it is a "deciduous forest". Mr. Pereira submitted that the term "deciduous forest" cannot be termed as a forest under the Forest (Conservation)

Act, 1980 as considered by the Apex Court and by this Court in various decisions. He submitted that a "deciduous forest" means bushes grown in monsoon and not a regular forest. He would submit that the Petitioners are trying to confuse the growth of vegetation during monsoon [considered as "deciduous forest"] with the regular term of growth of forest trees and therefore, even the *Sawant Committee* and the subsequent Committees did not think that the land of Respondent No. 6 could be classified/notified as forest land.

24. Mr. Pereira submitted that the NGT, in its order dated 18/08/2020 considered the report of all the Committees appointed by the Government of Goa and finally accepted the reports and declared a total of 46.11 square kilometres [in the State of Goa] as private forest land. He submitted that admittedly the land of Respondent No.6 does not form part of this 46.11 square kilometres, which, according to Mr. Pereira, would lead to the inescapable conclusion that the land of Respondent No.6 is not a forest land.

25. Mr. Pereira submitted that once the order dated 18/08/2020 of the NGT is final and which confirms the lands identified by different Committees as forests [i.e. 46.11 square kilometres as forest in Goa], the report of the *Court Committee* [constituted by this Court], and heavily relied upon by the Petitioners, becomes

inconsequential. He submitted that the reports of the earlier Committees including that of the *Sawant Committee*, were submitted as per the directions of the Apex Court in the case of ***T.N. Godavarman Thirumulkpad* (supra)**. The question of the existence of private forests in the State of Goa including the identification of it, was set at rest by the order of the NGT and therefore, the report of the *Court Committee* is inconsequential.

26. Mr. Pereira then submitted that in any event, the Committee appointed by this Court [the *Court Committee*] exceeded its jurisdiction and failed to adhere to the terms and conditions, under which it was appointed. The *Court Committee* violated the principles of natural justice while conducting its inspection and meetings as no notice or opportunity of hearing was given to Respondent No.6 or to other Respondents. The *Court Committee* also co-opted a Member to allegedly assist, which is violative of the order under which it was constituted. No permission was obtained by the *Court Committee* before opting for such a method. To take this argument forward, Mr. Pereira submitted that the Forest Officer by the name Mr. Karkhanis [acting as the Assistant Conservator of Forest] was co-opted by the *Court Committee* without the permission of the Court. In earlier proceedings under the provisions of the *Goa, Daman and Diu Preservation of Trees*

Act, 1984, Mr. Karkhanis had already deposed that the said land of Respondent No.6 is a forest. In other words, the co-opted member, already being of the opinion that the said land was a forest, had already prejudged the issue that the *Court Committee* was given the task to decide. This fact alone would vitiate the entire report of the *Court Committee*, was the submission of Mr. Pereira.

27. Mr. Pereira then submitted that the minutes of the *Court Committee* are distorted, manipulated and without the signature of all its Members. Further, no material was provided to Respondent No. 6, which the said *Court Committee* allegedly considered, so as to give an opportunity to Respondent No.6 to rebut it. No notice of the alleged inspection carried out by the Committee Members was issued to the Respondents. Even the draft report prepared by the Secretary of the *Court Committee* was never approved by the Members of the Committee.

28. Mr. Pereira submitted that the matter does not stop here. He submitted that the *Court Committee* did not follow the procedure as set out in the order dated 16.08.2006 [under which it was constituted] and submitted its report only on assumptions and conjectures which cannot be accepted as proof. In this regard, he invited our attention to the minutes of the said *Court Committee* in order to point out the discrepancies, loopholes and irregularities.

He submitted that the *Court Committee* failed to consider the criteria adopted by the *Sawant Committee* and the *Karapurkar Committee,* to come to its conclusions. No material relied upon by the said *Court Committee* was furnished to the owner of the property including the owners of the various plots. Thus, Mr. Pereira would submit that the Petition deserves to be rejected with heavy costs. In support of his contentions, he relied on the following decisions:

> *(i) Dhakeshwari Cotton Mills Ltd. Vs. Commissioner of Income Tax, AIR 1955 SC 65 and*
>
> *(ii) Tata Housing Development Co. Ltd. & Another Vs. Goa Foundation & Others, (2003) 11 SCC 714.*

29. Mr. Saresh Lotlikar, the learned Senior Counsel appearing for Respondent Nos. 9, 10, 12 to 15, 19, 21, 23, 24, 30 to 34, 39 to 41, 44, 46, 49 and 52 [i.e. the plot owners], submitted that till date the said land [which belonged to Respondent No.6 and subsequently sub-divided and sold to various plot holders], has not been classified as a forest by any Committee constituted by the Government of Goa and finally accepted by the NGT. Only the *Court Committee* has identified it as a forest. However, the report of the *Court Committee* is blatantly violative of the principles of natural justice as no opportunity was given to the plot owners to have their

say before their plots [purchased from Respondent No.6] were purportedly classified as a forest. He would submit that five houses constructed by plot owners as per the permission granted by this Court were not even called upon by the *Court Committee* to put up their contentions. Mr. Lotlikar would submit that the report of the *Court Committee* cannot be accepted for various reasons. Firstly, the Members were not present during the meetings and the minutes of the meetings show distorted versions. No documents are placed along with the report which the *Court Committee* has purportedly considered to arrive at its findings. No opportunity was given to the plot owners, even though specific directions in that regard were issued by this Court whilst constituting the said Committee. He would further submit that non-joinder of the Developer to the present Petition is also fatal, and no relief could be granted, as claimed by the Petitioners.

30. Mr. Lotlikar then submitted that the *Sawant Committee* report ought to be accepted as every forest existing in the State of Goa including private forests were identified. Relying upon paragraph 7.7 of the *Sawant Committee*'s report, which inter alia states that only remote and secluded places might have remained to be visited, itself shows that they visited Ella village which is centrally located and very close to Panaji city. He submitted that

this is also clear from Annexure VII-B of the said report which specifically identifies Survey Nos.77, 79, 136, & 138 of Ella Village as forest lands. The said land of Respondent No.6 (Survey No.100/0) is not identified as a forest. He then submitted that even the *Karapurkar Committee* report supports the findings of the *Sawant Committee* and therefore, the said Committee also did not identify the property of Respondent No. 6 as a forest.

31. Mr. Lotlikar would then submit that conversion of land (as to settlement) is not challenged before this Court. Without challenging such conversion, the sanad granted cannot be considered as illegal. This is for the simple reason that the sanad is not a consequence of the use of land as it is independent to and separate from the nature of land. According to him, the Petitioners ought to have challenged the conversion of the use of land and in the absence of it, the Petition must fail.

32. Mr. Lotlikar then submitted that the contention of the Petitioners that the Forest Officers decided that Survey No. 100/0 of Ella village is forest land, is absolutely incorrect. This is for the simple reason that the Forest Officers have no authority to declare or decide whether any land is a forest land or otherwise. Such contentions of the Forest Officers, at the most, can be considered as their opinion. It is for the Government to declare whether a

particular land is a forest or otherwise. Therefore, only because some Forest Officers claim that any land is a private forest, would not make it so. In the alternative, he submitted that even otherwise, fruit bearing trees existing on the said land would have to be ignored for determining the canopy density [which is one of the criteria for determining whether a particular land is a forest or otherwise]. Not a single Committee, including the *Court Committee* has considered this aspect, though admittedly fruit bearing trees were existing on the said land. He then submitted that the Forest Officers visited the said land in the year 1996-97 and did not observe that the said land was forest land. The conversion was obtained since the land in question was mentioned in the survey records as an orchard zone. He too, therefore, submitted that there is no merit in this Petition and the same ought to be dismissed.

REJOINDER OF THE PETITIONERS:

33. In rejoinder, Ms. Alvares would submit that all the Officers of the Forest Department, from the beginning, considered the said land as forest land and that the Forest (Conservation) Act, 1980 is applicable. She submitted that the sanad which is granted to Respondent No. 6 is challenged and rightly so, since before obtaining such sanad, the permission of the Central Government is necessary. She submitted that the report of the *Court Committee*

fulfills all the criteria and adequate opportunities were given to both parties to submit their arguments. The report of the *Court Committee* clearly shows that they considered only the admitted documents, and no other documents, and therefore, no notice was necessary to the respective parties. She submitted that Respondent No. 6, time and again admitted that his land consists of forest trees and considering the report of the Forest Officer including the panchanama, it is clear that the said land was consisting of mostly forest trees, and hence, a forest.

FINDINGS:

34. Before considering the rival contentions raised by the learned Counsel appearing for the respective parties, it would be apposite to refer to the earlier orders passed in this Writ Petition, as the said orders would have a direct bearing on the contentions raised before us. The first order was passed on 28.10.2002 which reads thus:

> *"Heard learned counsel for the petitioners as well as the respondents, except respondent no.6. Notice before admission. In the meantime, ad interim relief in terms of prayer Clauses (d) and (e), which read as under, returnable after Diwali Vacation:*
>
> > *(d) Pending hearing and final disposal of this petition, stay any further developmental works in respect of the property;*

(e) Pending hearing and final disposal of this petition, for an order restraining the respondent no.3 from renewing or issuing any fresh sanad for the said plot."

35. Thereafter, on 17.06.2003, the following order was passed:-

"Rule. Considering the permission to fell trees granted to respondent no. 6 by Permission dated 14th November 1996 where it was clearly set out that permission to cut trees was being granted with a condition that the land would not be diverted to Non-forestry purposes, the report of the Deputy Conservator of Forest that the land in question would come under Forest Conservation Act and further considering the guidelines dated 27th September 1991 issued by the Forest Department for application of the provisions of Forest (Conservation) Act and the Judgment of this Court in ***Shri Shivanand V. Salgaocar v. Tree Officer & Deputy Conservator of Forests and another****, Writ Petition No.162 of 1987, decided on 27th November 1990, this would be a prima facie case where the interim reliefs sought for should be granted. It is no doubt pointed out that plots have been sold and some constructions have come up. However, considering the provisions of the Forest Conservation Act, this would be a fit case where this Court should grant the reliefs. There will also be interim relief under Clause (f). At the hearing of this petition it is pointed out that some purchasers have started construction on the property and all those*

purchasers are not before this Court. Respondent no.5 is directed to issue stop order notice against all constructions until further directions from this Court. However, if any person has a licence and was constructing pursuant to such licence, liberty to the person to move this Court. That matter will be decided separately. The learned Advocate General states that Clause 5, which is the subject matter of the dispute and is in issue, is being deleted and substituted. The statement made by the Advocate General is accepted and, consequently, at this juncture, no further order is required on the same. Considering the urgency in the matter and that a large number of persons are affected, hearing be expedited."

36. Since this Court had granted a stay on further development with a rider that the concerned parties may approach this Court for modification, some of the added parties filed Miscellaneous Civil Application No. 572 of 2003, in which, the following order was passed on 14.10.2003.

"Heard counsel for the parties. The Interim Order, dated 17th June 2003, passed in Writ Petition No. 344 of 2002, itself permits persons, with licence to construct, to approach the Court for modification of the Order. The Miscellaneous Civil Application is filed seeking such modification on the ground that the applicant has all the necessary licences as required by law and should, therefore, be permitted

to complete her construction. We see no reason to deny such modification. The Interim Order, passed by this Court, on 17th June 2003, is, therefore, modified to the extent only of permitting the applicant to complete her construction of bungalow in Plot No.111 of Survey No.100/0 of Ela Village of Tiswadi Taluka and seek occupancy certificate, water and electricity connection etc.

2. The Miscellaneous Civil Application is, accordingly, disposed of."

37. Accordingly, this Court allowed some of the parties [who had licenses/permissions as required by law], to complete the construction/development of their residential premises on the plot which they purchased from Respondent No. 6, and also seek an occupancy certificate together with electricity and water connections.

38. Due to subsequent developments, another order was passed by this Court on 16.08.2006, wherein, with the consent of parties to the Petition, a Committee was constituted of experts [the *Court Committee*] to examine and report as to whether or not, land bearing Survey No. 100/0 [the said land of Respondent No.6] was a forest land but stands degraded, denuded or cleared. Four Members were appointed and one of them was appointed as the Chairman. The terms of the reference, the criteria, the guidelines

and the methodology by which the said Committee was to function, operate, and conduct the survey was also mentioned in the order, which reads thus:-

> *"Heard the learned counsel for the rival parties.*
>
> *Perused petition.*
>
> *2. The record of the petition reveals that pursuant to the directions of the Apex Court dated 12th December, 1996 in the case of* ***T. N. Godavarman Thirumulkpad v. Union of India*** *reported in (1997) 2 SCC 267, the Government of Goa had constituted two Expert Committees; one under, the chairmanship of Shri Sadanand M. Sawant and another under the chairmanship of Shri H. Y. Karapurkar vide orders dated 24th January, 1997 and 4th September, 1997 respectively. The above committees were set up to: (a) identify areas which are "Forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest; (b) identify areas which were earlier forests but stand degraded, denuded, or cleared; and (c) identify areas covered by plantation trees belonging to Government and those belonging to private persons.*
>
> *3. The above committees submitted their reports which were accepted by the State Government. However, the said committees could not take survey*

of entire State of Goa, with the result, there is no reference to the land which is a subject matter of the present petition bearing survey No.100/0 in village - Ella of Tehsil - Tiswadi, District - Old Goa ("the subject land" for short).

The Issues :

4. The core issue involved in the present petition is: "whether or not the above land bearing survey No. 100/0 was a forest land ?"

5. In order to seek expert opinion, looking to the consensus between the parties, we constitute and appoint an expert committee to examine and report as to whether the above subject land was earlier forest but stands degraded, denuded or cleared.

The Committee :

6. The members of the committee shall be as under:

(1) Shri H. Y. Karapurkar, Chairman;

(2) Conservator of Forest, Member;

(3) Deputy Conservator of Forest, South Goa, Member;

(4) Deputy Conservator of Forest, North Goa, Member Secretary.

The Term of Reference :

7. The term of reference of the committee is as under:

Whether the subject land bearing survey No.100/0 admeasuring 1,223.73 sq. km.

situated at village - Ella of Tehsil - Tiswadi, District - Old Goa.

Criteria :

8. The criteria earmarked for identification of the properties as Forest shall be as was fixed by the Government while making reference to the above committees; which is reproduced hereinbelow:

> *(i) 75% of the composition should be forestry species;*
>
> *(ii) The area should be contiguous to the Government forest and, if in isolation, should be more than 5 ha;*
>
> *(iii) Canopy density should not be less than 0.4.*

Guidelines and Methodology :

9. The guidelines and methodology adopted by the Karapurkar Committee appointed under the order of the State Government dated 1st September, 2000 shall be the methodology and guidelines which the committee shall adopt.

10. For the purpose of reaching to its findings, the committee shall also consider the following documents:

> *(i) Report of the Range Forest Officer (1996);*
>
> *(ii) Permission granted by the Deputy Conservator of Forests to fall trees on the Survey No.100/0 (1996);*
>
> *(iii) Punchanama and related documents regarding tree felling offences (2001);*
>
> *(iv) The photographs taken by the Forest Department at the time of registering offences of the tree felling lodged by the it,*

which will be produced before the Committee.

11. It would be open for the Committee to receive any other evidence which, in the opinion of the Committee, shall be relevant and useful for giving their expert opinion. The parties to the petition shall also be entitled to appear before the Committee to tender evidence, if any; and make their oral and written submissions.

12. The remuneration of Dr. Karapurkar is fixed in the sum of Rs.20,000/-, initially, to be paid by the State Government. The Committee shall submit its report within three months from the date of receipt of the copy of this order.

13. The State Government to deposit an amount of Rs.20,000/- with this Court within two weeks from today. The final liability of the payment and charges shall be subject to the result of the petition.

Stand over for four months to receive compliance report.

39. Accordingly, the Committee constituted by this Court submitted its report dated 14.12.2006 and observed that Survey No.100/0 of Ella village [the said land of Respondent No.6 admeasuring 7.69 hectares] was a forest.

40. After the submission of the said report, Respondent No. 6 raised objections to the findings given in the said report [to which

we have adverted to earlier] and submitted that the said report has been prepared without following the guidelines and the procedure set down by this Court in the terms of reference.

41. We are of the opinion, that before we look at the reports of the different Committees setup by the Government of Goa, it would be appropriate if we examine the report of the *Court Committee.* We say this because if the report of the *Court Committee* [identifying the said land of Respondent No.6 as a forest] is accepted by us, then the Petition must succeed for the simple reason that admittedly the conversion sanad was granted to Respondent No.6 without the approval of the Central Government as mandated by the provisions of the Forest (Conservation) Act, 1980. However, if the said *Court Committee* report is discarded, as tried to be projected by the Respondents, either on technical or other grounds, then we would examine the other Committee reports to determine [on the preponderance of probabilities] whether the said land of Respondent No.6 can be classified/identified as a forest land.

REPORT OF THE COURT COMMITTEE:

> Whether needs to be rejected for violation of the principles of natural justice?

42. As mentioned earlier, vide order dated 16.08.2006, the co-ordinate Bench of this Court constituted the *Court Committee* to opine/decide as to whether the said land bearing Survey No. 100/0 was a forest land. The order dated 16.08.2006, as quoted earlier in this judgment, clearly shows that the said *Court Committee* was to consist of Mr. H.Y. Karapurkar being the Chairperson; the Conservator of Forest as a Member; Deputy Conservator of Forest, South Goa, as Member; and the Deputy Conservator of Forest, North Goa, as Member Secretary. Thus, the constitution of this Committee consisted of only four Members.

43. The terms of reference for this *Court Committee* are found in paragraph 7 of the said order. The criteria carmarked for identification of the properties as a forest is found in paragraph 8, and thereafter, guidelines and methodology are found in paragraphs 9 and 10. Paragraph 11 is very relevant for deciding the contentions raised by the Respondents regarding the breach of principles of natural justice. This Court specifically observed that it would be open for the *Court Committee* to receive any other evidence, which in the opinion of the Committee, shall be relevant and useful for giving their expert opinion. This Court further ordered that the parties to the present proceedings shall also be

entitled to appear before the *Court Committee* to tender evidence, if any, and to make their oral as well as written submissions.

44. Relying upon paragraph 11 of the order dated 16.08.2006, the learned counsel for the Respondents contended that the *Court Committee* failed to give any opportunity to the Respondents to appear before it, tender evidence, if any, and make their oral and written submissions. To properly appreciate this argument, we have to consider the report of the *Court Committee* along with the minutes appended to it. This report, at paragraph 4, shows the relevant evidence received and considered by the *Court Committee*. In paragraph 11 it speaks about the site inspection done on 14.10.2006 and 07.11.2006. Paragraph 12 of the report shows a personal hearing to the Respondents wherein it is said that the Respondents submitted their say on 12.11.2006. It specifically refers to the present Respondent No. 6, who is the owner of the land, but not the other Respondents who also purchased various plots and became co-owners of the said land. There is absolutely no reference to any opportunity being afforded to Respondent Nos. 8 to 52, being the plot owners, to appear and submit their evidence, even though they are parties to the present Petition. This apart, the minutes of the meeting held by the Committee are also produced on record. In all, there are seven meetings. During the first meeting

Resp No 6 was intimated

held on 09.10.2006, the meeting was attended by the Chairman along with other three Members. However, the minutes record in paragraph 2 itself as under:-

> *"The Assistant Conservator of Forests, Legal Cell, Forest Department, Shri M.V. Karkhanis also attended on request as he had headed the case earlier and has relevant documents and knowledge of the matter and of the plot under survey no. 100 of Ella village, Old Goa."*

45. In paragraph 3 of the report dated 14.12.2006, the Committee decided to co-opt Shri M.V. Karkhanis, Assistant Conservator of Forest, Legal Cell, on the ground that he was conversant with the case since the beginning. This decision was taken by the *Court Committee* without the leave of this Court and even without informing the parties to the Petition.

46. The minutes of the first meeting dated 09.10.2006 are also signed by Mr. M.V. Karkhanis, which is clear from page 3. It shows that Mr. Karkhanis was co-opted by the Committee as a Member to assist them in the matter since he was earlier acquainted and conversant with the relevant documents.

47. The order dated 16.08.2006 [of this Court], by which, the said *Court Committee* was constituted, nowhere permits the said Committee to co-opt any Member of the Forest Department.

Admittedly, the *Court Committee* did not approach this Court to permit it to co-opt Mr. Karkhanis as a Committee Member or to assist the said *Court Committee*. This decision was taken by the Committee Members unilaterally, and even without informing the Respondents. Therefore, the contention of the Respondents that the *Court Committee* violated the terms of reference has to be accepted for the simple reason that the said Committee was constituted by this Court specifically with reference to the said land of Respondent No.6, and the terms of reference were very specific as found in the order itself. The Members of the *Court Committee* were only four persons including the Chairman. Therefore, the *Court Committee* was bound to abide by the terms of reference and consider any other evidence, which would be relevant and useful for giving their expert opinion. The Chairperson of the Committee was himself a higher Officer of the Forest Department. One of the Members of the Committee was the Conservator of Forest, and the remaining two Members were the Deputy Conservator of Forest, North Goa and South Goa District. Therefore, the need to co-opt the Assistant Conservator of Forest (Mr. Karkhanis), was neither required nor necessary. Even otherwise, the Committee ought to have approached this Court seeking permission to co-opt Mr. Karkhanis on the ground that he was conversant with the facts of the matter. Nothing prevented the Committee from adopting such a course.

48. It is clear from the minutes of the meeting that Mr. Karkhanis has played a major role in the *Court Committee* coming to findings that the said land of Respondent No.6 is a forest land. In these circumstances, it was all the more necessary for the Committee to obtain permission of this Court before co-opting Mr. Karkhanis as a Member. Further, the reason for the *Court Committee* to co-opt Mr. Karkhanis was to assist the said Committee in determining whether the said land of Respondent No.6 was a forest land because he was earlier acquainted with the matter regarding the land of Respondent No.6 and conversant with the relevant documents. If this be the case, Mr. Karkhanis would actually be a witness and therefore, could never have been co-opted as a Member of the *Court Committee*. Therefore, the objections raised by the Respondents are perfectly justified as the *Court Committee* was appointed with a specific reference, and it was not permissible to alter the terms of the reference without the leave of this Court.

49. This apart, the minutes of the meeting produced along with the report of the *Court Committee*, if perused, clearly go to show that these minutes are distorted, manipulated, and not supported by proper material. The Respondents were never called upon by the *Court Committee* to submit their evidence, if any. It shows that the Petitioners were called on one date to submit their arguments.

Copies of such arguments were not furnished to Respondent No. 6. Similarly, Respondent No.6 was called on another date to submit his arguments without being informed of the contentions/arguments of the Petitioners. Hence, Respondent No.6 was not in a position to meet the arguments of the Petitioners. Thus, the contention of the learned Counsel for the Respondents that no proper opportunities were afforded to them by the said Committee is fully justified. The Respondents were not knowing as to what was going on during the meetings of the *Court Committee* and what documents they were considering. Since the written submissions of the Petitioners were not given to Respondent No. 6, he was not aware of what material had been placed before the *Court Committee* by the Petitioners. It goes without saying that if one party tenders evidence in support of his case, the other party is entitled to know what documents and evidences are furnished, and have the opportunity to rebut it, if not by way of cross examination of such parties, then at least by producing relevant documents. Similarly, the parties were also entitled to submit oral as well as written submissions. At this stage, it was the duty of the *Court Committee* to direct the parties to exchange or supply their submissions to the opposite party so as to meet the submissions of each other. By failing to adhere to such procedure, the *Court Committee* has violated the basic principles of natural justice. Since

the *Court Committee* was appointed by this Court to verify and decide whether land bearing Survey No. 100/0 was a forest land, it assumed the function of a quasi-judicial nature and not only an administrative function. We therefore have no hesitation in holding that there appears to be a total breach of principles of natural justice by the *Court Committee* while conducting its meetings as well as before submitting its report to this Court.

50. Otherwise also, even if the Committee functioned in an administrative capacity, it would still have to follow principles of natural justice when such directions were specifically given to it by this Court in paragraph 11 of its order dated 16.08.2006. In ***Keshav Mills Co. Ltd.* (supra)**, the Apex Court, in paragraph 8, clearly observed that the principles of natural justice that regulate an administrative act or order are a far more difficult one to answer. The Apex Court further observed that it is not feasible or even desirable to lay down any fixed or rigorous yardstick in the matter as the concept of natural justice cannot be put into a straight-jacket formula. It is futile to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of any given case. The only essential point that must be kept in mind in all cases is that the person concerned should have a reasonable opportunity to present his case and that the

administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly. While observing this, the Hon'ble Apex Court also referred to the observations of *Tucker, L.J.* in **Russell Vs. Duke of Norfolk, (1949) 1 All ER 109**, which quote:-

> *"The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth."*

51. The above observations, in fact, support the contentions raised by the Respondents in the matter at hand. Even if the *Court Committee* acted in an administrative capacity, there was a specific direction to afford a reasonable opportunity to the parties, which means that the *Court Committee* was duty bound to call upon the parties to the present Petition, or their Advocates, to appear before the said Committee and then to give them an opportunity to produce their evidence, if any. Admittedly, no such procedure was followed despite these clear directions.

52. Admittedly, the *Court Committee* failed to call upon the parties including Respondent Nos. 8 to 52 or their Advocates. Even

Respondent No. 6 was called at the fag end to submit his submissions without furnishing copies of the submissions of the Petitioners. The parties were also called on different dates. Thus, it appears from the record, that the *Court Committee* completely failed to adhere to the principles of natural justice. On this count alone, the report of the *Court Committee* needs to be discarded.

53. Even on merits, the report submitted by the *Court Committee* cannot be accepted for the specific reason that that the criteria laid down by this Court were given a complete go-by and different criteria have been adopted, and that too, without giving any opportunity to the respective parties to counter it. The course adopted by the *Court Committee* while considering the documents and the photographs is not even appended to the report or to the minutes. No intimation was given to the parties about the so-called documents which the Committee considered for arriving at its conclusion. Everything was done behind the back of the parties, even though, it was specifically observed by this Court that the parties shall be given an opportunity to produce their evidence. When the Committee deviated from the reference and the terms set out in the order passed by this Court, and that too, by flouting the principles of natural justice, such a report cannot be considered for the purpose of deciding the present issue. Thus, we firmly believe

that the *Court Committee* [appointed by this Court] violated the principles of natural justice, and also, deviated from the terms of reference. Hence, the report submitted by it, holding that the said land belonging to Respondent No. 6 was a forest, would have to be discarded.

REPORTS OF THE COMMITTEES APPOINTED BY THE STATE OF GOA

54. Having discarded the report of the *Court Committee*, we have to still examine whether the said land of Respondent No.6 can be classified as a forest and consequently whether the provisions of the Forest (Conservation) Act, 1980 apply to it. Admittedly, there is no statutory definition of what constitutes a forest or forest land either in the Forest (Conservation) Act, 1980 and/or the Rules framed thereunder. Even in the *Goa, Daman and Diu Preservation of Trees Act, 1984*, the words "forest" or "forest land" are not defined. Admittedly, Survey No. 100/0 of Ella village is a private land owned by Respondent No. 6. It is not Government land.

55. For the first time, in the case of ***T.N. Godavarman Thirumulkpad* (supra)**, the issue with regard to the identification of forest land [whether belonging to the Government or otherwise], notifying it, and preserving it, came up before the

Hon'ble Supreme Court. The Hon'ble Apex Court, by its order dated 12.12.1996, directed all the State Governments to constitute a Committee of experts within a period of one month to: (i) identify the areas which are forests, irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of such land; (ii) identify areas which were earlier forests but stood degraded, denuded or cleared; and (iii) identify areas covered by plantation trees belonging to the Government and those belonging to private persons. All the State Governments were directed to constitute a Committee within one month to undertake this task and to submit its report.

56. In paragraph 4, the Hon'ble Apex Court observed that the Forest (Conservation) Act, 1980 was enacted to check further deforestation which results in an ecological imbalance and thus provisions were made for the conservation of forests and matters connected thereto. Similarly, provisions were made that applications must be made to the Authorities constituted under the Forest (Conservation) Act, 1980 irrespective of the nature of ownership or classification thereof before clearing trees or converting such land for non-forest purposes. It was held that the word "forest" must be understood according to its dictionary meaning as it covers all statutorily recognized forests, whether

designated as reserved, protected or otherwise. It was further observed that "forest land" occurring in Section 2, will not include only forest as understood in the dictionary meaning, but also any area recorded as a forest in the Government records, irrespective of the ownership.

57. Prior to the decision of the Hon'ble Supreme Court in ***T.N. Godavarman Thirumulkpad*** **(supra)**, in the case of ***Shivanand Salgaocar Vs. Tree Officer & Deputy Conservator of Forests & Another*** **(Writ Petition No. 162 of 1987 decided on 27.11.1990)**, a co-ordinate Bench of this Court observed in paragraph 8 as under:-

> *"8. The question whether the Forest (Conservation) Act, 1980 applies to the land of the petitioner turns on whether the land of the petitioner can be considered as forest land or not. Admittedly there is no statutory definition of what constitutes 'forest' or forest land'. In the case of* ***Janu Chandra Waghmare v. The State of Maharashtra*** *reported in AIR 1978 Bombay 119, a full Bench of Bombay High Court considered, inter alia, the meaning of the term 'forest' under Schedule 7, List II, Entry 19 of the Constitution of India. The Court quoted with approval the meaning of the word 'forest' as given in Oxford English Dictionary, namely (I) an extensive tract of land covered with trees and undergrowth,*

> *sometimes intermingled with pasture; also the trees collectively of a forest; (ii) a woodland district, usually belonging to the King, set apart for hunting wild beasts and game etc. and (iii) a wild uncultivated waste, wilderness. The Court has said that a forest is basically a tract of land covered with trees and undergrowth.*

58. As per the directions of the Hon'ble Apex Court in ***T.N. Godavarman Thirumulkpad*** **(supra)**, the Government of Goa, somewhere in January 1997, set up a Committee called the *Sawant Committee*, comprising of Forest Officers and other experts, in order to identify forest areas in the State of Goa. The *Sawant Committee* submitted its report to the Government of Goa on 18.12.1999. Admittedly, though the *Sawant Committee* considered the areas in Ella village, it did not recognize/classify/identify Survey No. 100/0 [belonging to Respondent No. 6] as a forest land.

59. We are mindful of the fact that since the report of the *Sawant Committee* discloses that they were unable to visit and verify remote places and secluded land, the applicability of the Forest (Conservation) Act, 1980 [to lands other than the ones reported by the Committee] would not be limited. In order to appreciate these

observations of the Committee in paragraph 7.7, the same are reproduced for ready reference:-

> *"7.7. The possibility of interpretation error, coupled with other limitations like low resolution of the imageries used cannot be overlooked. Although the field staff has included all possible lands based on local knowledge also, but undulating and hilly terrain might have prevented some remote and secluded lands from identification and inclusion in the report. The committee therefore feels that applicability of Forest Conservation Act on lands other than those reported by the committee shall not be limited by this report."*

60. The Committee further recommended that the State Government may notify any additional lands identified in the future as "forests" within the meaning of the Supreme Court order dated 12.12.1996.

61. The *Sawant Committee* in its final report identified Government Forest land to the tune of 1223.73 square kilometres and forest on lands other than Government land, including revenue land, to the tune of 48.67 square kilometres. Whilst coming to its findings, the *Sawant Committee* considered the terms of reference as under:

(A) Identify areas which are forests, irrespective whether they are so notified, recognized or classified under any law, irrespective of the ownership of the land of such forest;

(B) Identify areas which were earlier forests but stand degraded, denuded or cleared; and

(C) Identify areas covered by plantation trees belonging to the Government and those belonging to private persons.

62. Thus, the *Sawant Committee* constituted by the Goa Government with the above terms of reference, was duty bound to identify the areas which were earlier forests but stood degraded, denuded or cleared. This is relevant for the purpose of deciding the present Petition as it is the specific contention of the Petitioners that the said land belonging to Respondent No. 6 was degraded, denuded, and cleared, though it was a forest land.

Dates are not aligned properly

63. The documents relied upon by the *Sawant Committee* to come to its conclusions are found in paragraph 5.1 of its report, which include:-

(i) Green cover map of Goa based on Satellite Imageries of 1:50,000 scale prepared by the Department of Science Technology and

Environment, Government of Goa based on Satellite Imageries of the year 1991-1993;

(ii) The Topo sheets of the year 1965 obtained from the Survey of India;

(iii) Village maps prepared by the Directorate of Settlement and Land Records Department, Government of Goa;

(iv) Revenue Records of ownership by survey numbers i.e. Form I & XIV obtained from the Revenue Department, Government of Goa;

(v) Regional Plan of Town and Country Planning Department, Government of Goa;

(vi) Statistics on plantation etc. obtained from the Forest Department and Statistics and Planning Department of Government of Goa;

(vii) State of Forest Report 1997 prepared by Forest Survey of India and

(viii) Government Forest Maps from State Forest Department.

64. The action taken by the *Sawant Committee* is found in paragraph 6 of its report wherein it specifies that in order to identify which lands are forests, irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land, the method adopted by the Committee was to superimpose the green cover map based on satellite imageries of

1991-1993 on the Government Forest map to distinguish and demarcate on the green cover, lands other than Government Forest lands. Such demarcated maps were then superimposed on topo sheets from the Survey of India to prepare base maps. These base maps were given to the forest staff to visit the sites and report the areas which met the criteria set up by the Committee to identify as forests. Accordingly, the Range office staff visited the places and identified the areas. The Revenue authorities were also asked to identify forests on revenue lands and report it to the Committee. In addition to this, a notice was published in local newspapers to give wide publicity and scope of identification of forests to the local people. The Committee then randomly selected the site for visits by the Committee and its Members. In all, the forest area of 97 villages in the entire State of Goa were inspected by the Committee Members. Directions were issued to the Deputy Conservator of Forests to inspect and verify the sites which could not be visited by other Committee Members. The Committee had 14 visits in all and held 19 meetings.

65. With this background, the observations in paragraph 7.7 of the report and the recommendations of the *Sawant Committee* assume importance. Admittedly, paragraph 7.7 of the report of the *Sawant Committee* [as reproduced above], only indicate that there

could be a possibility of error, coupled with the fact that some remote areas and secluded lands having hilly terrain could have been left out by the Committee, and therefore, it was recommended that the Government is free to identify more lands in the future.

66. However, the fact remains that the said land [belonging to Respondent No. 6] situated in Ella village, is neither in a remote area nor secluded from habitation. Admittedly, the said land of Respondent No.6 is close to Panaji and exists in the nearby area of Old Goa. Though the said land is a hilly area it is close to NH-17. The Committee has identified certain lands existing in Ella village as forest land. This is clear from the report itself which shows [in Annexure VII-B] that Survey No. 77, 79, 136, and 138 in Ella village admeasuring 33.98 hectares are identified as forest lands by the *Sawant Committee*. However, Survey No. 100/0 [the said land], which falls in between the above lands, is admittedly not identified as forest land by the *Sawant Committee*.

67. Faced with these facts, Ms. Alvares submitted that the *Sawant Committee* itself admits that it was not possible to visit all the areas and, therefore, the said report is not conclusive. We are unable to accept this argument for the simple reason that the *Sawant Committee* did in fact consider in its report Ella village in which the said land of Respondent No.6 is situated. There is nothing

on record to even remotely suggest that even though the *Sawant Committee* identified certain lands in Ella village as forest lands, they did not visit and/or did not take into consideration the said land of Respondent No.6 (being Survey no.100/0). It is not as if the said land of Respondent No.6 is in a remote area or secluded from habitation. If we were to accept the submission of Ms. Alvares, we would have to assume [without there being anything on record] that though the *Sawant Committee* took into consideration the lands in Ella village [to determine which lands fulfill the criteria of being a forest], they somehow did not visit and/or take into consideration the said land of Respondent No.6, also in Ella village. Without there being any positive evidence in that regard, we cannot come to such a conclusion merely on surmises and conjectures. Even otherwise, we find that this argument cannot be accepted because after the report of the *Sawant Committee*, several other committees (referred to hereafter), have undertaken the task of identifying lands in the State of Goa as forest lands and none of those Committees have also identified the said land of Respondent No.6 as a forest land.

68. After the report of the *Sawant Committee*, the Government of Goa appointed another Committee headed by Mr. Karapurkar (the *Karapurkar Committee*) and thereafter two separate

Committees, one for North Goa (the *Thomas Committee*) and the other for South Goa (the *Araujo Committee*) were also constituted. None of these Committees also identified Survey No. 100/0 in Ella village as a forest land. In other words, none of the Committees set up by the Government of Goa identified the said land of Respondent No.6 [in Ella village] as a forest land.

69. Thereafter, the Government of Goa constituted another Committee headed by Deep Shikha Sharma (the *Deep Shikha Sharma Committee*) pursuant to the order of the NGT dated 07.01.2016. This Committee was constituted on 23.04.2018 to review identified private forest areas not only by the *Thomas Committee* and the *Araujo Committee*, but also those identified by the *Sawant Committee* and the *Karapurkar Committee*. This task was entrusted to the *Deep Shikha Sharma Committee* because grievances were made by private citizens as well as NGOs on the inclusion/non-inclusion of certain areas as private forests. To ensure a uniform approach to the issue, the *Deep Shikha Sharma Committee* was constituted. The constitution of the *Deep Shikha Sharma Committee* is found in Chapter II of its report. This Committee was constituted by the Government of Goa consisting of (i) the Deputy Conservator of Forests, Working Plan Division, Ponda as its Chairperson; (ii) the Director, Settlement and Land

Records, Panaji Goa or his/her nominee as a Member; (iii) the Additional Collector of the Revenue Department dealing with land records of North Goa District, Panaji - Goa and South Goa, Margao - Goa as Members; (iv) the Assistant Conservator of Forest, Headquarters of North Goa Division, Ponda and South Goa Division, Margao as Members; (v) **Mr. Sandeep Azrenkar, Environmentalist, resident of Margao, Goa as Member (Petitioner No. 1)**; (vi) Mr. Shirang Jhamble, Savoi Verem, Goa as Member; and (vii) the Chief Conservator Forest Surveyor of the Forest Department, as Member Secretary. Thus, it is clear that Petitioner No. 1 was one of the Members of this Committee who participated in all the proceedings and even signed the report. It is nowhere contended by Petitioner No. 1 or by Petitioner No. 2 that during the proceedings conducted by the *Deep Shikha Sharma Committee*, Petitioner No. 1 - Sandeep Azrenkar, was prevented from informing the Committee that the said land belonging to Respondent No. 6 was also a forest land and needs to be considered accordingly. From this perspective, the terms of reference of the *Deep Shikha Sharma Committee* are relevant [found in paragraph 2.2], which reads thus:

> *"2.2. Terms of Reference of the Review Committee*
>
> *The Terms of Reference of the Review Committee were as under:-*

(i) *The Committee shall review digitized maps of private forest areas which have been prepared using the Revenue Department/Directorate of Settlement and Land Records and overlaid on the Forest Cover Map/Classified image of the Forest Survey of India for assessment of Forest cover in Goa, conforming to the three criteria.*

(ii) *Technical expertise of Forest Survey of India (FSI), Bangalore could be taken in order to ascertain the composition and canopy density of the identified areas, if there is any dispute.*

(iii) *The Dy. Conservator of Forests of the concerned territorial divisions will then carry out ground verification in respect of such cases which are in doubt or having ambiguity in order to prepare final report on Private Forest areas in the State.*

(iv) *The Committee shall submit its report within period of 3 (three) months."*

70. Clause (iii) of the above terms specifically empowers the Committee and the Deputy Conservator of Forests of the concerned territorial divisions to carry out ground verification in respect of such cases which are in doubt or having ambiguity in order to prepare a final report on private forest areas. Thus, the Committee was empowered even to consider cases which were in doubt (such as the land of Respondent No. 6) and to carry out ground verification. However, it is quite surprising that Petitioner No. 1, being one of the Members of the Committee, did not even inform the Committee that there is a doubt with regard to the land of Respondent No. 6 and there is a need to carry out ground verification so as to identify it as a forest or otherwise. This itself shows that the report of the *Deep Shikha Sharma Committee* dated 20th June 2019, and which is also signed by Petitioner No. 1 as one of its Members, is accepted by Petitioner No. 1 and also by the Government. This report has been confirmed by the NGT as the final report identifying private forest lands in Goa. Admittedly, this report of the *Deep Shikha Sharma Committee*, though identifies Survey Nos. 77, 79, 136 and 138 existing in Ella village admeasuring 33.98 hectares as forest land, does not identify the said land of Respondent No. 6 as a forest.

71. To put it in a nutshell, when all the Committees referred to earlier did not notify/classify the land of Respondent No. 6 as a forest land, the submission on behalf of the Petitioners that it is a forest land, and that too on the basis of some documents and affidavits of the Officers of the Forest Department, cannot be considered as conclusive, especially when these Forest Officers were part and parcel of these Committees and also helped the said Committees in identifying Government Forests as well as private forests in the State of Goa, from time to time.

72. According to us, Mr. Pereira, the Learned Senior Counsel appearing on behalf of Respondent No.6, has rightly pointed out that the NGT, in its order dated 18.08.2020, has set at rest the issue by accepting the *Deep Shikha Sharma Committee* report in toto, which is clear from the observations in paragraph 25, which read thus:

> "*Accordingly, since the matter is pending since long and the matter has been surveyed, identified and demarcated by more than 4 times by the Forest Department by the committee as mentioned above and there was litigation pending before the Hon'ble Apex Court and Hon'ble High Court and issue was heard and decided by the National Green Tribunal Bench at Pune, <u>we are of the view that the matter should come to end and the report submitted by the</u>*

Sharma Committee be accepted in toto. Accordingly, both the I.A. No. 240/2020 and I.A. No. 254/2020 are rejected."

73. Paragraph 26 of the order of the NGT dated 18.08.2020 confirms the report of the *Deep Shikha Sharma Committee* thereby demarcating the area consisting of forests which includes Government Forests as well as private forests. As mentioned earlier, admittedly, even in the report of the *Deep Shikha Sharma Committee*, the said land of Respondent No. 6 is not identified as a forest. At this stage, it is necessary to mention that even though the present matter was pending, there was no restriction on the subsequent Committees including the *Deep Shikha Sharma Committee* to notify the land of Respondent No.6 as a forest land. In other words, all these Committees were entitled to identify Government Forest lands as well as private forest lands in the entire State of Goa including the land belonging to Respondent No. 6.

74. Admittedly, the Chairperson and Members of these Committees appointed by the State of Goa were Members of the Forest Department. The said Committees were assisted by the Officers of the Forest Department from time to time. Therefore, the contention raised by the Petitioners that from 1996, the Officers of the Forest Department observed that the land of Respondent No. 6

is forest land, cannot be accepted for the simple reason that nothing prevented these Forest Officers from informing these Committees and/or producing such documentary evidence before them to identify the said land belonging to Respondent No. 6 as a forest land.

75. The learned Counsel for the Petitioners vehemently contended that from the year 1996, the Forest Department and its Officers concluded that the Forest (Conservation) Act, 1980 is applicable qua the land of Respondent No. 6 and therefore, such documents cannot be ignored. However, when questioned as to why some Forest Officers who assisted the abovementioned Committees did not inform or produce such documents to show that the said land belonging to Respondent No. 6 is a forest, there was no answer. As rightly pointed out by Mr. Pereira and Mr. Lotlikar, such observations of some Forest Officers are not conclusive and at the most could be considered as their opinion. We are also aware that such Officers of the Forest Department are neither empowered nor entitled to declare the land of Respondent No. 6 as a forest land. It is only the Government, and that too, on recommendations of the Committees appointed by it, is entitled to notify a particular land as a forest land. When various Committees did not find the land of Respondent No. 6 fulfilling the criteria of being classified as a forest,

this Court cannot, on the basis of some documents of the Officers of the Forest Department, wherein they observed that the Forest (Conservation) Act, 1980 is applicable to the said land of Respondent No.6, and thereby giving an opinion that the said land was a forest land. When the experts appointed by the Government of Goa [through various Committees] did not identify the land of Respondent No. 6 as a forest, even assuming it was it was denuded, cleared or otherwise, the contention of the Petitioners on this aspect cannot be accepted.

76. It is no doubt true that Respondent No. 6 felled trees from the said property for which prosecution was launched and he pleaded guilty. However, what is important to note is that these proceedings were under the provisions of *the Goa, Daman and Diu Preservation of Trees Act, 1984* and not under the Forest (Conservation) Act, 1980. Similarly, the contention of the Petitioners that on the basis of the panchanama and other documents, it would be enough to declare the said land of Respondent No.6 as a forest cannot be accepted for the simple reason that this is the job of experts who are required to consider the criteria laid down in the case of ***T.N. Godavarman Thirumulkpad* (supra)** and later on considered in the case of ***Tata Housing Development Co. Ltd.* (supra)**.

77. Before parting with this matter, we must note that Ms. Alvares placed heavy reliance on the Application filed by Respondent No. 6 with the Conservator of Forest, North Goa Division, Ponda, dated 12.09.1996 wherein Respondent No. 6 while describing the number of trees in column (vi) stated that his property consists of 200 teak trees, 30 mango trees, 200 bamboos, 500 jungli, 300 coconut trees and 30 cashew trees. On receipt of such an application, a report of the Range Forest Officer was submitted for the purpose of considering the license for felling of the trees. This report, produced at page 406 of the paper book, shows in column 19 that the Forest (Conservation) Act, 1980 is applicable as the total area is forest in nature and the area is more than 5 hectares.

78. On perusal of this report, it shows that though it is signed by the Range Forest Officer, it does not disclose the date on which such inspection was carried out and in whose presence. Respondent No.6 in his affidavit has clearly objected to the writings in column (vi) onwards in Form-B on the ground that the writing in columns (i) to (v) is totally different from the handwriting appearing in columns (vi) and (vii) wherein the number of trees and other details are mentioned. On perusing the report ourselves, we find that this is indeed the case.

79. The learned Counsel for the Petitioners also heavily relied upon the Indemnity Bond (page 403) executed by Respondent No.6 for the grant of license for cutting and transportation of trees from his property. The contents of the said Bond are quoted below for reference:-

> *"I, Satish Vinayak Bhandari, son of Vinayak Bhandari, major by age, landlord, resident of Ela, Old Goa, do hereby kind myself that in view of licence granted to me of cutting and transporting the trees from my private property bearing Survey number 100/0 Village Ela, Old-Goa, whatever costs of that may be incurred for forest department of Government of Goa or other authorities for replanting the trees in my said private property.*
>
> *I further kind myself that I will replant the trees in the said my property after cutting and transporting the existing standing trees and/or forest produce.*
>
> *I undertake that I shall not develop the said property in to Plots.*
>
> *In witness where of I have executed this Bond on this 12th day of November, 1996, at Ponda-Goa in favour of Forest Department of Government of Goa".*

80. After reading the said contents, the only inference that could be drawn is that Respondent No. 6 undertook to replant the trees

after cutting and transporting the existing trees. He also undertook not to develop the said property into plots. Therefore, the contention of the Petitioners that Respondent No. 6 in the said Indemnity Bond admitted that the said land/property is a forest, cannot be inferred from such document. Precisely, for this purpose, this Court appointed a Committee (the *Court Committee*) headed by Mr. Karapurkar, who was an experienced Forest Officer and who also headed another Committee (the *Karapurkar Committee*) constituted by the Government of Goa, after the *Sawant Committee.*

81. As mentioned earlier in this Judgement, the purpose of appointing the *Court Committee* was to give an opportunity to both parties to produce their evidence and only thereafter, to decide whether the said land/property was a forest or otherwise. To our mind, there were disputed questions of facts, which were required to be adjudicated by the *Court Committee.* Also, whether said land of Respondent No.6 fulfilled the criteria of being classified as a forest depended upon three major factors/criteria as laid down by the Apex Court in the case of ***T.N. Godavarman Thirumulkpad* (supra)**, [and even considered by the earlier Committees], which are (i) 75% of the composition of trees on the land should be forestry species; (ii) The area should be contiguous

to Government Forest land, and if in isolation, should be more than 5 hectares; and (iii) the Canopy density should not be less than 0.4. To determine all these criteria, special knowledge is required about forests and identifications of it. Admittedly, the land belonging to Respondent No. 6 is more than 5 hectares and it is not contiguous to Government Forest land. Thus, criteria (ii) mentioned above stands fulfilled, in which, no expert opinion is necessary. However, criteria (i) and (iii) require special knowledge and only persons having experience and special knowledge about it, would be in a position to authoritatively state whether these criteria were also fulfilled qua the land of Respondent No. 6.

82. The criteria and methodology to find out a minimum of 75% of the composition as forestry species necessarily requires ground verification. It is not possible to find out such criteria by only perusing the maps or the images taken from the satellite. Precisely this has been observed by the *Deep Shikha Sharma Committee* in paragraph 2.3. (iv). This Committee observed that any ground verification is a must since out of the three criteria to notify any land as a forest, the first criteria i.e. 75% of the tree composition should be forestry species, cannot be ascertained by using forest cover map etc. Even for ground verification, the *Deep Shikha Sharma*

Committee adopted a methodology for field verification of canopy density and species composition on the ground as under:-

> *"(a) For field verification 5% sampling intensity was fixed, considering the extent of work, availability of resources and available time for submission of final report. Sampling points were drawn for field verification, based on Stratified Random Sampling (SRS).*
>
> *(b) KML files were created for these sampling points and was given with GPS location of each point to North and South Goa Division*
>
> *(c) Sample plot of 20m x 50m dimension was fixed at given GPS location for verification of canopy density and species composition as per given proforma."*

83. Thus, specialized efforts were required to be carried out for the purpose of identification of 75% of the forest species and the canopy density of 0.4. This is not possible by just visiting the plot of land or by only perusing the photographs received by the satellite images. Thus, the specialized procedure was not followed by the *Court Committee* [appointed by this Court], which is clear from the minutes of their meetings. They only perused some of the documents including the panchanama, the Application filed by Respondent No. 6 and the prosecution launched against Respondent No. 6. Though the *Court Committee* observed about

two visits to the land of Respondent No. 6, no procedure is disclosed as to what verification was carried out during such visits to the said land.

84. Admittedly, there were some fruit bearing trees in the land belonging to Respondent No. 6. Therefore, the Committee was duty bound to carry out an inspection so as to fulfill all three categories mentioned above for the purpose of declaring the land belonging to Respondent No. 6 as a forest.

85. The contention of the learned Counsel for the Petitioners that this Court, on the basis of some documents, could come to the conclusion that the land belonging to Respondent No. 6 was a forest, cannot be accepted for the simple reason that this Court is not an expert to identify the other two categories [i.e. 75% of the composition should be forestry species and the canopy density should not be less than 0.4] before the land of Respondent No.6 can be identified as a forest. Both these categories are required to be identified scientifically and by experts.

86. We as a Writ Court, are unable to accept the contentions of the Petitioners on this count for the simple reason that the job to declare a particular land as a forest is a specialized job and is required to be ascertained on the basis of three criteria laid down

by the Apex Court and enumerated by us earlier. Therefore, looking at the above material and more particularly, the failure on the part of the *Court Committee* to adhere to the terms of the reference under which it was appointed, we are unable to accede to the prayer of the Petitioners.

87. In view of the foregoing discussion, rule is discharged, and the above Writ Petition is dismissed. In view of the dismissal of the Writ Petition, all pending Applications therein do not survive and are disposed of accordingly. However, there shall be no order as to costs.

BHARAT P. DESHPANDE, J. **B.P. COLABAWALLA, J.**

VAIGANKAR ESHA SAINATH Digitally signed by VAIGANKAR ESHA SAINATH Date: 2024.02.29 15:49:43 +05'30'

16-8-2006

(15)

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 344 OF 2002

Sandeep Azrenkar and another. ... Petitioners,

V/s.

State of Goa and others. ... Respondents.

Ms.N.Alvares for the petitioners.

S.S.Kantak, Advocate General with
Ms.Rakhi Chodankar, AGA for
respondent Nos.1 to 3 and 7.

Coelho Pereira, senior counsel with
J.Godinho for respondent No.6.

S.D.Lotlikar, senior counsel with
Ms.S.Naik for respondent Nos.9 to 15
and 17 to 52.

CORAM : V.C.DAGA AND

N.A. BRITTO, JJ.

DATED : 16th August 2006.

HIGH COURT OF JUDICATURE AT BOMBAY PANAJI BENCH GOA

ORDER :

Heard learned counsel for the rival parties.

Perused petition.

2. The record of the petition reveals that pursuant to the directions of the Apex Court dated 12th December, 1996 in the case of ***T.N.Godavarman Thirumulkpad v. Union of India*** reported in (1997) 2 SCC 267, the Government of Goa had constituted two Expert Committees; one under the chairmanship of Shri Sadanand M.Sawant and another under the chairmanship of Shri H.Y.Karapurkar vide orders dated 24th January, 1997 and 4th September, 1997 respectively. The above committees were set up to: (a) identify areas which are "Forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest; (b) identify areas which were earlier forests but stand degraded, denuded, or cleared; and (c) identify areas covered by plantation trees

AT BOMBAY PANAJI

belonging to Government and those belonging to private persons.

3. The above committees submitted their reports which were accepted by the State Government. However, the said committees could not take survey of entire State of Goa, with the result, there is no reference to the land which is a subject matter of the present petition bearing survey No.100/0 in village- Ella of Tehsil- Tiswadi, District- Old Goa ("the subject land" for short).

<u>The Issues</u> :

4. The core issue involved in the present petition is: "whether or not the above land bearing survey No.100/0 was a forest land?"

5. In order to seek expert opinion, looking to the consensus between the parties, we constitute and appoint an expert committee to examine and report as to whether the above subject land was earlier forest but stands degraded, denuded or cleared.

The Committee :

6. The members of the committee shall be as under:

(1) Shri H.Y.Karapurkar, Chairman;
(2) Conservator of Forest, Member;
(3) Deputy Conservator of Forest, South Goa, Member;
(4) Deputy Conservator of Forest, North Goa, Member Secretary.

The Term of Reference :

7. The term of reference of the committee is as under:

> Whether the subject land bearing survey No.100/0 admeasuring 1,223.73 sq.km. situated at village- Ella of Tehsil- Tiswadi, District- Old Goa.

Criteria :

8. The criteria earmarked for identification of the properties as Forest shall be as was fixed by the Government while

making reference to the above committees; which is reproduced hereinbelow:

(i) 75% of the composition should be forestry species;

(ii) The area should be contiguous to the Government forest and, if in isolation, should be more than 5 ha;

(iii) Canopy density should not be less than 0.4.

<u>Guidelines and Methodology</u>:

9. The guidelines and methodology adopted by the Karapurkar Committee appointed under the order of the State Government dated 1st September, 2000 shall be the methodology and guidelines which the committee shall adopt.

10. For the purpose of reaching to its findings, the committee shall also consider the following documents:

(i) Report of the Range Forest Officer (1996);

(ii) Permission granted by the Deputy Conservator of Forests to fall trees on the Survey No.100/0 (1996);

(iii) Punchanama and related documents regarding tree felling offences (2001);

(iv) The photographs taken by the Forest Department at the time of registering offences of the tree felling lodged by the it, which will be produced before the Committee.

11. It would be open for the Committee to receive any other evidence which, in the opinion of the Committee, shall be relevant and useful for giving their expert opinion. The parties to the petition shall also be entitled to appear before the Committee to tender evidence, if any; and make their oral and written submissions.

12. The remuneration of Dr.Karapurkar is fixed in the sum of Rs.20,000/-, initially, to be paid by the State Government. The Committee shall submit its report within

three months from the date of receipt of the copy of this order.

13. The State Government to deposit an amount of Rs.20,000/- with this Court within two weeks from today. The final liability of the payment and charges shall be subject to the result of the petition.

Stand over for four months to receive compliance report.

Sd/-

(V.C. DAGA, J.)

Sd/-

(N.A. BRITTO, J.)

skn/-

AT BOMBAY PANAJI BENCH

W.P. NO. 344/2002

Sandep Azrenkar & anr. V/s State of Goa & ors.

SYNOPSIS

The petitioners have challenged the Conversion Sanad dated 4.4.2000 issued to Resp. No. 6 (owner/ developer) to construct a residential housing colony on Sy. No. 100/0, admeasuring 7.6 ha, on the ground that it is forest land. The petitioners have also challenged and sought quashing of a Govt circular of 1997 which removed the need for the then existing practice of consultation by the Collector with the Forest Dept prior to the issue of Coversion Sanad. During the pendency of the petition, the disputed clause in the Circular has been deleted. Finally, the petitioners have prayed for an order directing the Respondents to restore the land to its original forest condition.

As per the Forest Conservation Act, 1980 (FCA) prior permission of the Ministry of Environment & Forests is required before any forested land can be diverted to non-forest use. Without obtaining any permission from the Ministry for diversion of the property and without obtaining permission from the Forest Dept for felling of trees, the Resp. No. 6, around January 2001, illegally felled hundreds of forest trees on the plot, cleared the underbrush by large-scale burning of the property and thereafter made plots, some of which were sold to various persons, who have subsequently been joined as Resp. No. 8-52 in the petition.

All the officers of the Forest Department who have had occasion to deal with this land, right from 1996 onwards (when the Resp. No. 6 first sought permission to fell some trees on Sy No. 100/0 on the grounds that they were diseased and matured) have opined that the land is forest and that FCA is applicable to this land. The Resp. No. 6 too was made aware at that time of the forestry status of the land and that the plot cannot be diverted to non-forest use without the Ministry's clearance under the FCA. He also signed an Indemnity Bond in November 1996 that he will replant the trees he felled and that he will not develop Sy. No. 100/0 into plots.

However, within a few years, he applied to the relevant authorities for Conversion Sanad and for subdivision of the property into plots. Owing to the Govt 1997 circular which removed the erstwhile practice of consultation with the Forest Dept prior to issue of Sanad, the Forest Dept was totally in the dark while the applications of Resp. No. 6 were processed and approvals eventually granted. Nonetheless, every single approval carried the clause that permission of the Forest Dept is necessary before felling of any trees on the property.

Clearly aware that permission for clear felling of all the trees on the property in preparation for development would not be granted by the Forest Dept – which had already taken the view that the property met the criteria for identification as forest – the Resp. No. 6 decided to take the law into his own hands and around January 2001, illegally felled approx. 609 forest trees and 15,000 bamboos on the plot and cleared the area by burning. These details are recorded in the panchnama dated 14.2.2001 and in other reports prepared by the Forest Dept.

The Dy. Conservator of Forests in his complaint dated 12.2.2002 filed in the Court of JMFC pursuant to the illegal felling states that "such a heinous crime has resulted in destruction of invaluable dry deciduous forest which was serving as an important watershed for the Carambolim lake... And the destruction of which will have adverse effect on the ecology of the area."

The Chief Conservator of Forest in his affidavit dated 13.12.2002 filed in this petition, states that the land fulfils all the criteria for being identified as private forest. Thus the Forest Dept. (RFO, DCF, CCF) has been consistent in its opinion that FCA is applicable to this property. However, the developer (Resp. No. 6) produced a report that the area is not forest.

To resolve the controversy, this Hon'ble Court appointed an Expert Committee on 16.8.2006 to examine whether the plot was forest prior to the illegal felling. The Committee has submitted its report on 15.12.2006. Its conclusion is that "Sy. No. 100/0 was a forest and has been clearfelled during or before the month of January 2002."

Ms. Norma Alvares
Advocate for Petitioner

W.P. NO. 344/2002

Sandeep Azrenkar & Anr. v/s State of Goa & Ors.

LIST OF DATES

DATE	PARTICULARS	PAGE NO.
1991	On 27.09.1991, Forest dept issued Criteria Guidelines for application of Forest Conservation Act to private forests. The same guidelines are subsequently adopted by the expert committees appointed by Govt to identify private forests in Goa.	281
1996	On 12.09.1996 Resp. No. 6 applies to Forest Dept to fell approx 60 trees on sy No. 100/0. Site Report records that the plot is forest in nature with about 100 *trees in* 1 hectare. The RFO writes to the DCF that the plot comprises naturally grown forestry species, which is very dense, (along with bamboo and cashew) and, as the area is more than 5 ha, **FCA is applicable.** DCF opines that as the applicant desires to exploit only diseased and mature trees, Indemnity Bond be obtained from him to ensure replanting, in case the license for tree felling is granted. On 12.11.1996, the Resp. No. 6 executes Indemnity Bond that he will replant trees in lieu of those cut and undertakes that he will not develop the property into plots.	403 – 408
	On 14.11.1996, the Dy. Conservator of Forests grants Resp. No. 6 permission to fell 23 trees on sy. No. 100/0, subject to replanting in the gaps created by felling. Order records that land cannot be diverted to non-forestry purpose and that Respondent is liable to legal action if land is so diverted.	138

1997	On 23.06.1997, the Govt issues a Circular on Procedure for issue of Conversion Sanad. Clause V states: The practice of consultation with Forest Dept is not necessary in view of various Forest Acts and Regulations which have to be complied with independently. [This clause is subsequently deleted as per statement of Adv Gen to HC on 17.06.2003 in this petition.]	83
2000	After Town Planning approves change of land use from Orchard to Settlement on 1-3-1999, Resp. No. 6 applies for Conversion Sanad. A site inspection report is prepared by the Dy. Collector on 13.03.2000, showing barely 16 trees on the property. While Town Planning recommends grant of Sanad, Forest Dept is not consulted for its NOC in view of the Circular. On 04.04.2000, the Dy. Collector grants Conversion Sanad with the condition that trees may not be felled without permission of Forest Dept. On 17.10.2000, Town Planning issues Provisional NOC for subdivision of the property. Thereafter the Resp No. 6 commences development works.	93 31 146
2001	Large-scale illegal felling of trees, clear felling of shrubs and scorching of the property by the Resp No 6 in January 2001 on Sy. No. 100/0. No permission to fell trees was taken from the Forest Dept. On 14.02.2001, based on citizens' complaints, Forest Dept conducts Panchnama which records that 609 forest trees and approx. 15,000 bamboos have been illegally felled by the Resp. No. 6. and the area has been cleared and burnt. List of trees felled, trees standing and forest produce seized is recorded by Forest Dept.	33- 56
2002	On 11.02.2002, criminal complaint is filed in the Court of the Judicial Magistrate, Panaji, by the DCF, North Goa, for offence of illegal felling of trees. Complaint records that crime has resulted in destruction of invaluable dry deciduous forest. Order is passed on 18.06.2002 in Cr. Case No. 116/OA/2002. The Accused pleads guilty. Sentenced to pay fine of Rs. 1000/-	57 - 75

October 2002	WP No 344/2002 is filed. On 28.10.2002, the High Court grants ad interim relief staying any further development works on the property and restraining the Collector from renewing or granting fresh sanad. (*Compilation – pg 1*)	
2003	The CCF files an affidavit dated 13.12.2002 that the area fulfils the criteria for being identified as private forest. Rule is issued on 17.6.2003. Interim order restrains Panchayat from granting construction license for any constructions on the plot and directs Panchayat to stop work on all constructions. Liberty granted to any person who is constructing pursuant to license to move the court for appropriate relief. (*Compilation – pg 3*). SLP filed by Resp No 6 is disposed of without disturbing the HC order. On 14.10.2003, the HC permits 3 persons claiming to have all licenses to complete their constructions. (*Compilation – pg 6*)	
2004	In June, Resp. No. 6 produces a report on forest status of the plot authored by one Dr. Ashok Joshi, based on his site visit in January 2004. The report concludes that 'Sy. No. 100/0 is a mistaken identity as a forest, though it is not so'	222
2006	On 16.8.2006, High Court appoints an Expert Committee headed by Shri H. Y. Karapurkar and comprising the Conservator of Forests and the DCFs of North and South Goa to examine whether the subject land was earlier forest but stands degraded, denuded or cleared. The Committee is directed to adopt the guidelines and methodology adopted by the Karapurkar Committee and to also consider documents annexed to the petition and any other relevant evidence. The parties to the petition are permitted to appear before the committee and make oral and written submissions. Committee is to submit its report within four months. (*Compilation – pg 8*)	

	On 15.12.2006, the Expert Committee submits its report. Conclusion: In view of all the foregoing considerations, the Committee has come to the conclusion that that the land under Sy.No. 100/0 admeasuring 7.69 Ha. of Ella village was a forest and has been clear felled before or during the month of January 2002.	359
2008	In Sept 2008, Resp. No. 6 objects to the Expert Committee's Report, inter alia on the grounds that the annexures to the report do not support the findings of the Report. As the annexures appear to have errors of pagination etc. court directs Govt to file correct copy. However, Govt is unable to produce any other documents. (*Compilation - pg 15*)	423
2013 to 2017	In October 2013, WP 344/2002 was transferred to the Hon'ble NGT for disposal. The transfer order was objected to by the respondents. The Supreme Court directed the matter to be reverted to the High Court for final disposal.	

 28-10-2002

(Spl.-H.C.A.S.,C.D.,78-e)

IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE
*****

WRIT PETITION NO. 344 OF 2002

Office Notes, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Smt. N. Alvares, advocate for the petitioners.

Shri A.N.S. Nadkarni, Advocate General with Shri N. K. Sawaikar, Addl. Govt. Advocate for respondents no. 1, 2, 3 & 7.

Shri J. S. Vaz, Addl. Central Govt. Standing Counsel for respondent no.4.

CORAM: P. V. KAKADE &
P V. HARDAS, JJ.

DATE: 28th October,2002.

P.C.

Heard learned counsel for the petitioners as well as the respondents, except respondent no.6. Notice before admission. In the meantime, ad interim relief in terms of prayer Clauses (d) and (e), which read as under, returnable after Diwali Vacation:-

> "(d) Pending hearing and final disposal of this petition, stay any further developmental works in respect of the property;
>
> (e) Pending hearing and final disposal of this petition, for an order

(2)

restraining the respondent no.3 from renewing or issuing any fresh sanad for the said plot."

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Date [illegible] 8-5-03
Date on which copy delivered 4-6-03

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High Court of Bombay
at Goa, Panaji (Goa)
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8-5-03

(Spl.-H.C.A.S.,C.D.,78-e)

IN THE HIGH COURT OF BOMBAY AT GOA 17-6-2003

PANAJI-GOA

APPELLATE SIDE

WRIT PETITION NO. 344 OF 2002.

Office Notes, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	Mrs. Norma Alvares, Advocate for the Petitioners. Mr. A.N.S. Nadkarni, Advocate General with Mr. N.K. Sawaikar, Additional Government Advocate for the Respondents 1 to 3 and 7. Mr. J. Vaz, Additional Central Government Standing Counsel for the Respondent No. 4. Mr. J.E. Coelho Pereira, Senior Advocate with Mr. J. Godinho, Advocate for the Respondent No. 6. Coram : F.I. REBELLO AND P.V. HARDAS, JJ. Date : 17th June 2003. P.C.:- Rule. Considering the permission to fell trees granted to respondent no. 6 by Permission dated 14th November 1996 where it was clearly set out that permission to cut trees was being granted with a condition that the land would not be diverted to Non-forestry purposes, the report of the Deputy Conservator of Forest was that the land in question would come under Forest Conservation Act. and further considering the

guidelines dated 27th September 1991 issued by the Forest Department for application of the provisions of Forest (Conservation) Act and the Judgment of this Court in Shri Shivanand V. Salgaocar v. Tree Officer & Deputy Conservator of Forests and another, Writ Petition No. 162 of 1987, decided on 27th November 1990, this would be a prima facie case where the interim reliefs sought for should be granted. It is no doubt pointed out that plots have been sold and some constructions have come up. However, considering the provisions of the Forest Prevention Act, this would be a fit case where this Court should grant the reliefs. There will ~~also~~ be interim relief under Clause (f). At the hearing of this petition it is pointed out that some purchasers have started construction on the property and all those purchasers are not before this Court. Respondent no. 5 is directed to issue stop order notice against all constructions until further directions from this Court. However, if any person has a licence and was constructing pursuant to such licence,

(5)

liberty to the person to move this Court. That matter will be decided separately. The learned Advocate General states that Clause 5, which is the subject matter of the dispute and is in issue, is being deleted and substituted. The statement made by the Advocate General is accepted and, consequently, at this juncture, no further order is required on the same. Considering the urgency in the matter and that a large number of persons are affected, hearing be expedited.

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High Court of Bombay,
at Goa, Panaji (Goa)
Pin 403 001

14-10-2003

(Spl.-H.C.A.S.,C.D.,78-e)

6

IN THE HIGH COURT OF BOMBAY AT GOA

PANAJI-GOA

APPELLATE SIDE

MISCELLANEOUS CIVIL APPLICATION NO. 574 OF 2003.
IN
WRIT PETITION NO. 344 OF 2002.

Office Notes, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	Petitioner present in person. Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe, Advocate for the Applicant. Mr. A.N.S. Nadkarni, Advocate General with Mr. N.K. Sawaikar, Additional Government Advocate for Respondents 1 to 3 and 7. Mr. J.S. Vaz, Additional Central Government Standing Counsel for the Respondent No. 4. Mr. J.E. Coelho Pereira, Senior Advocate with Mr. J. Godinho, Advocate for the Respondent No. 6. Coram : V.G. PALSHIKAR AND P.V. HARDAS, JJ. Date : 14th October 2003. P.C.:- Heard counsel for the parties. The Interim Order, dated 17th June 2003, passed in Writ Petition No. 344 of 2002, itself permits persons, with licence to construct, to approach the Court for modification of the Order. The Miscellaneous Civil Application is filed seeking such modification on the ground that the applicant has all the

SM

necessary licences as required by law and should, therefore, be permitted to complete her construction. We see no reason to deny such modification. The Interim Order, passed by this Court, on 17th June 2003, is, therefore, modified to the extent only of permitting the applicant to complete her construction of bungalow in Plot No. 111 of Survey No. 100/0 of Ela Village of Tiswadi Taluka and seek occupancy certificate, water and electricity connection etc..

2. The Miscellaneous Civil Application is, accordingly, disposed of.

SM

16-8-2006 (8)

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 344 OF 2002

Sandeep Azrenkar and another. ... Petitioners,

V/s.

State of Goa and others. ... Respondents.

Ms.N.Alvares for the petitioners.

S.S.Kantak, Advocate General with Ms.Rakhi Chodankar, AGA for respondent Nos.1 to 3 and 7.

Coelho Pereira, senior counsel with J.Godinho for respondent No.6.

S.D.Lotlikar, senior counsel with Ms.S.Naik for respondent Nos.9 to 15 and 17 to 52.

CORAM : V.C.DAGA AND

N.A. BRITTO, JJ.

DATED : 16th August 2006.

HIGH COURT OF JUDICATURE AT BOMBAY PANAJI BENCH GOA

ORDER :

Heard learned counsel for the rival parties.

Perused petition.

2. The record of the petition reveals that pursuant to the directions of the Apex Court dated 12th December, 1996 in the case of *T.N.Godavarman Thirumulkpad v. Union of India* reported in (1997) 2 SCC 267, the Government of Goa had constituted two Expert Committees; one under the chairmanship of Shri Sadanand M.Sawant and another under the chairmanship of Shri H.Y.Karapurkar vide orders dated 24th January, 1997 and 4th September, 1997 respectively. The above committees were set up to: (a) identify areas which are "Forests" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest; (b) identify areas which were earlier forests but stand degraded, denuded, or cleared; and (c) identify areas covered by plantation trees

belonging to Government and those belonging to private persons.

3. The above committees submitted their reports which were accepted by the State Government. However, the said committees could not take survey of entire State of Goa, with the result, there is no reference to the land which is a subject matter of the present petition bearing survey No.100/0 in village- Ella of Tehsil- Tiswadi, District- Old Goa ("the subject land" for short).

The Issues :

4. The core issue involved in the present petition is: "whether or not the above land bearing survey No.100/0 was a forest land?"

5. In order to seek expert opinion, looking to the consensus between the parties, we constitute and appoint an expert committee to examine and report as to whether the above subject land was earlier forest but stands degraded, denuded or cleared.

AT BOMBAY

The Committee :

6. The members of the committee shall be as under:

(1) Shri H.Y.Karapurkar, Chairman;
(2) Conservator of Forest, Member;
(3) Deputy Conservator of Forest, South Goa, Member;
(4) Deputy Conservator of Forest, North Goa, Member Secretary.

The Term of Reference :

7. The term of reference of the committee is as under:

> Whether the subject land bearing survey No.100/0 admeasuring 1,223.73 sq.km. situated at village- Ella of Tehsil- Tiswadi, District- Old Goa.

Criteria :

8. The criteria earmarked for identification of the properties as Forest shall be as was fixed by the Government while

making reference to the above committees; which is reproduced hereinbelow:

(i) 75% of the composition should be forestry species;

(ii) The area should be contiguous to the Government forest and, if in isolation, should be more than 5 ha;

(iii) Canopy density should not be less than 0.4.

Guidelines and Methodology:

9. The guidelines and methodology adopted by the Karapurkar Committee appointed under the order of the State Government dated 1st September, 2000 shall be the methodology and guidelines which the committee shall adopt.

10. For the purpose of reaching to its findings, the committee shall also consider the following documents:

(i) Report of the Range Forest Officer (1996);

(ii) Permission granted by the Deputy Conservator of Forests to fall trees on the Survey No.100/0 (1996);

(iii) Punchanama and related documents regarding tree felling offences (2001);

(iv) The photographs taken by the Forest Department at the time of registering offences of the tree felling lodged by the it, which will be produced before the Committee.

11. It would be open for the Committee to receive any other evidence which, in the opinion of the Committee, shall be relevant and useful for giving their expert opinion. The parties to the petition shall also be entitled to appear before the Committee to tender evidence, if any; and make their oral and written submissions.

12. The remuneration of Dr.Karapurkar is fixed in the sum of Rs.20,000/-, initially, to be paid by the State Government. The Committee shall submit its report within

three months from the date of receipt of the copy of this order.

13. The State Government to deposit an amount of Rs.20,000/- with this Court within two weeks from today. The final liability of the payment and charges shall be subject to the result of the petition.

Stand over for four months to receive compliance report.

Sd/-

(V.C. DAGA, J.)

Sd/-

(N.A. BRITTO, J.)

skn/-

BENCH AT BOMBAY PANAJI

15

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 519 OF 2009
IN
WRIT PETITION NO. 344 OF 2002

SANDEEP AZRENKAR AND ANR., ... Applicants
Versus
STATE OF GOA THROUGH CHIEF SECRETARY AND 52 ORS., ... Respondents

Ms. Norma Alvares,Advocate for the applicants.

Ms. S. Vaidya, Advocate for the respondent Nos. 9,15,17 and 52.

Mr. S. S. Kantak, Advocate for the P. Talaulikar, Additional Governmen Advocate for the respondent Nos. 1 to 3,7.

Mr. J. Godinho, Advocate for the respondent No.6.

Coram:- S.B. DESHMUKH &
U. D. SALVI, JJ.

Date:- 20th July, 2009

P.C.

Heard the learned Counsel for the respective parties. The Counsel fo the applicants, has pointed out to us page 486, page 492 from Volum No.(2) and the learned Advocate General has also pointed out pag No.499. All pages are, in relation to minutes of the Meetings of th Committee. The learned Counsel, who appears for the respondent No.6 submits that reply in response to the writ petition, is filed by him. Afte hearing the learned Counsel for the parties, in our view, this applicatior can be considered favourably since the learned Advocate General Mr Kantak made a statement on instructions that he will replace the correc copy of the minutes of the meetings concerned from the record. The statement made by the Advocate General is accepted and taken on record.

2. The application is partly allowed and disposed of.

S.B. DESHMUKH, J.

U. D. SALVI, J.

SMA

N

Writ Petition No. 344/2002

Submissions of Petitioners on 9 primary issues

1. Forest Conservation Act, 1980 is applicable to Sy.No.100/0 of Ella village

The Forest Conservation Act, 1980 is without doubt applicable to Sy No 100/0 as per the *Shivanand Salgaoncar* judgment (facts are similar), the Supreme Court's 12.12.1996 order in *Godavarman* (forest is understood in the dictionary meaning of the word) and consistency of all the reports on the forestry status of the plot from 1996-2006. The plot was first recognized as forest in 1996, thereafter again held to be forest when DCF filed a complaint in 2001-2002 and once again affirmed as forest in 2006 by the High Court's Expert Committee, which opined thus on the basis of documents which High Court itself directed it to consider. There is no report to the contrary (except the discredited Joshi report).

a) The FCA came into force in 1980 and from that day onwards it applied to all forests across the country, government or private. This was affirmed in the 1990 *Salgaoncar* judgment when the HC explicitly held: (i) FCA applies to private lands (ii) if foresters decide that the land is forest, the court would have no reason to disagree with the assessment (iii) wrong classification in the land records is no reason to deny forestry status, if on the ground the land is forest. [In *Salgaoncar*, the petitioner had challenged the forest status of his property before the High Court - not done by Resp.No.6 here]

b) In 1991, criteria were fixed by the Forest Dept for identification of private forests. These same three criteria were adopted by the State when it set up Expert Committees to identify private forests. These criteria continue to be the norm in Goa even at present.

c) The Resp No.6's plot was identified as forest on 3 different occasions by 3 different forest officers from September to November 1996. The Resp No. 6 had himself submitted that there were 1260 trees on the 7.6 ha plot when he applied on 12.09.1996 for tree felling permission [*pg. 408-409*]. The officers who identified the plot included:

– Asst Cons. of Forests in his report dated 21.09.1996 (>5 ha & 80% canopy density - Expert Comm. Report, *pg. 365*)

– RFO in his report on 06.11.1996 (based on number of trees and forestry species - [*pg. 405 - 407*])

(Both ACF and RFO concluded on the basis of site visits).

– DCF permitted select tree felling permission on 14-11-1996 thereby also informing Resp No 6 that FCA is applicable [*pg. 138*].

d) Select felling of trees does not amount to diversion of a plot to non-forest as the land remains forest land. Hence, the fact that permission was given in 1996 to the Resp No. 6 to fell some trees does not violate the FCA.

e) In 2002, the DCF files a complaint of illegal felling, registered as a case under the Trees Act 1984 and states that the area that is clear-felled and burnt is a heinous crime as the "land is a dry deciduous forest." [*pg. 57-84*]

f) The Resp.No.6 does not challenge the identification of forest in 1996, nor the identification once again as forest in 2002. He accepts all the documents indicating the forestry status of the plot and admits that he felled the trees despite being aware that FCA is applicable [*pg. 74 - 75*].

g) The Chief Conservator of Forest in his affidavit expressly affirms that the record shows that the plot is forest. There is no vagueness in this statement. He is reiterating the 1996 position of the officers of his dept. The CCF is an expert forester who can read the record and conclude accordingly. If the Sawant Committee's visit to Ela had concluded identification of forests in this village, there was no reason for him to state that the plot had yet to be identified by the Expert Committee. [*pg. 86-88*].

h) It is because there was clear evidence recorded by forest officers that the plot was forest, but the Sy number was not found in the Sawant Committee report which had clearly stated that its report was incomplete, that the Court appointed an Expert Committee to examine the specific record of 1996 and the subsequent tree felling crime records and opine

whether the plot was forest before it was clear felled. This is affirmed by the Expert Committee [*pg. 374*]. Thus, a minimum of 5 forest officers have expressed in writing (over 10 years) that Sy No 100/0 was forest.

i) There is no challenge vide a formal WP or an application in the present WP petition by the respondents to any of these reports on the forestry status of the plot, not even in 2006. Challenge cannot be via an affidavit. If there is no challenge, there is no occasion for the Court to take a different view.

2. <u>Forestry status of Sy. No. 100/0 not affected by its non-listing as forest in Sawant or Karapurkar or subsequent State Level Expert Committee reports.</u>

a) The issue that the Sy No. 100 was not identified by the Sawant Committee was squarely raised by the Resp No. 6 in its affidavit dated March 2003. The Court could have dismissed the petition at that time itself if non-inclusion in the S&K reports was of such import. But the Court admitted the petition in June 2003 and granted interim stay of development on the property as it could not ignore the fact that expert officers had found the plot to be forest and had stated so in their reports on record.

b) Sawant Committee was appointed in Jan 1997 and submitted its report in 1999. The forest trees on Sy. No 100 were presumably existing at that time. The Committee itself admits that it made random visits and only properties that were visited and identified were recorded in its report. Hence some surveys are indicated in part only, clearly showing that those plots were visited. We cannot know why Sy No 100/0 was not identified. There are no records to offer reasons. But merely because it is not listed in the report, this Court cannot conclude that it was not forest. Moreover, the Resp No 6's actions to destroy the evidence of forest ought to be taken into consideration and adverse inference must be drawn from such crime. This is the dilemma that the court faced in 2006 and which it sought to resolve by getting an expert opinion on the events of 1996 and 2001.

c) Karapurkar Committee's TORs were only two and they did not include identification of degraded forest lands. Initially its work was stayed by the Supreme Court. When it resumed in February 2002, the forest on Sy. No 100 had already been largely decimated. The High Court committee was headed by Dr Karapurkar and officers. The committee would have mentioned the fact that it had visited the plot, if it had indeed done so. The record provided in the Karapurkar Committee report shows that it did not visit Ela village ***(list of villages visited is at pg 66 of the Karapurkar report).***

d) The Deepshika Sharma Committee was tasked only with finalizing the Sawant and Karapurkar reports totalling 67 sq kms. It would not identify new areas. Its report is restricted only to sy nos listed in the two reports. The Forest Dept had already finalised approx. 41.2 sq kms of the S&K reports. To this the Sharma committee added another 4. 91 sq kms from the Sy. nos listed in the two reports. There is no way that Sy No 100 could find a place in the Sharma final report, which was accepted by the NGT.

e) Like the Karapurkar Committee, the TORs of Thomas Committee for identification of private forest in North Goa did not include identification of degraded forest lands. The Araujo Committee was for South Goa. Thus, it is only **one** Committee and not **four** committees which did not identify Sy. No 100 as private forest. Therefore, the statement made by the counsels for the Respondent No.s 6 and 8-52 that these 4 committees all visited Ela village are incorrect as being contrary to record.

3. <u>The Resp. No. 6 intentionally and deliberately violated the FCA, 1980 and the Apex Court's order of 12.12.1996</u>

a) On 14-11-1996, the Resp. No. 6 was made aware that FCA was applicable to Sy No. 100/0 (via the tree felling permit) and liable for legal consequences if used for non-forest purpose [*pg. 138*]. He executed Indemnity Bond not to develop property into plots [*pg. 403-404*]. He thereby admitted that the trees to fell are forest. R-6 thus accepted the forest status of the plot. Once the Forest Dept identified the plot as forest and this status was not challenged by the owner, there is no occasion for the Court to consider otherwise. In *Salgaoncar*, even though the owner challenged the identification, and there was no formal order of any forest committee, the Court held with the Dy Conservator of Forest's expertise in the matter.

b) The Resp. No 6 was required to take the Forest Dept's NOC when Town Planning granted provisional sub-division of the property. He did not do so.

c) Due to the circular, Forest Dept was not consulted before grant of Conversion Sanad. But R-6 was required to take the NOC of the Forest Dept. As Resp No 6 was fully aware that the Forest Dept would object, he decided to present a *fait accompli* situation and clearfelled the plot and burned the vegetation. Further, the Trees Act [proviso to S. 9 (3)] does not permit felling on more than 1 ha of land and not more than two permissions can be issued per year. This was another reason that the Resp No. 6 did not approach the authorities to fell the trees. All this amounts to Resp being in full knowledge and wilfully violating the FCA. R-6 must not be rewarded for his *mala fide* actions.

d) One month after the plot was identified as forest, i.e., on 12-12-1996, the SC directed that all activity in forest areas without prior permission from the Ministry will cease [*Godavarman, (1997) 2 SCC 267*]. By 12.12.1996, the Resp No. 6's plot had already been identified by Forest Dept as forest and he was aware of the same. By clear felling 609 forest trees and 15.000 bamboos [*pg. 35*] without prior permission from the MoEF, the Resp No. 6 also violated the Supreme Court's order. The HC Expert Committee report states that bamboo is a forest species [*pg 372*]. In 2001-02, the property was described in the documents (Panchanama etc.,) as forest. The Resp No 6 also

signed a document that he will store the felled forest produce [*pg. 37*] but he later destroyed the evidence and opted to pay the security deposit.

e) The Resp No 6's actions have throughout been deliberate and aimed to destroy the forest on his property. He should not be rewarded for deliberately flouting the law. He is not an innocent victim who was unaware of forest status and of the consequences. He calculated well that the fine under the Goa Trees act was a mere Rs.1000 and thought he would get away with his criminal actions.

4. **<u>The Conversion Sanad must be set aside:</u>**

a) Sanad is based on incorrect facts. The Dy Collector's Site visit report erroneously stated there were only 16 trees on the plot. [*pg 93*]

b) The Collector was unaware that the plot had already been identified as forest by the officials of the Forest Dept.

c) Sanad condition to take permission of the Forest Dept to fell the trees was violated. Once a sanad condition is violated it can be set aside on this ground.

d) The Sanad is the sole document on record, which by its very nature is an order permitting Sy No 100/0, which had already been identified by the Forest Dept as forest, to be used for residential purpose. It also permits the owner to level and clear the land for residential buildings.

e) The Sanad is the diversion order of the State Government enabling forest land to be used for non-forest purpose. This order therefore violates S. 2 (ii) of the FCA. Hence the conversion sanad is liable to be quashed and set aside.

f) Once the Sanad is quashed, the land, although zoned as Settlement, cannot be used for non-forest purpose. There are several plots zoned as settlement in the Regional Plan which have been identified as private forest. The forestry status will prevail over the RP zoning as the RP is itself a proposed land use document.

5. Submissions on the Expert Committee Report.

a) The Committee was appointed with the consent of parties. The order dt. 16.08.2006 of this Hon'ble Court expressly observes that the Sawant Committee could not take survey of the entire Goa. Hence, forestry status of Ela prior to removal of the forest by the Resp No 6 needed to be ascertained based on the criteria of the S&K committees. The Court lists certain documents on the basis of which the Committee must take its decision. This order has attained finality. The fact that the Sawant Committee does not list Sy No 100 is accepted by the Court as not being indicative of the forestry status of the plot. Resp No 6 cannot raise all over again the issue that his property is not in the Sawant Com. report and therefore is therefore not forest. This has been considered by this Court.

b) The Committee has examined records dating back to 1996, of the nature of the land before the clear-felling occurred and after the tree felling. The criteria adopted in 1996 based on the 1991 guidelines and the criteria of the S&K Committees were found to be the same. The Committee reports that all three criteria were meticulously scrutinised in 1996 as per the records, when the plot was identified as forest.

c) The Court directed the Committee to adopt the same methodology as was adopted by the erstwhile Karapurkar Committee. The methodology of the Karapurkar Committee was to issue a general advertisement of the plots to be visited and scrutinize the submissions, if any, made by owners of the plot. The final decision on forestry status was independently taken by the Karapurkar Committee based on the plot meeting the 3 criteria, as per its expertise in the matter. In this case the respondents were aware that the forestry status of Sy No 100 was under consideration, and a report to be submitted in three months, so the issue of issuing an advertisement did not arise.

6. Whether the Expert Committee violated the High Court's order by not giving notice to Resp. Nos. 8-52 of its proceedings and by co-opting a forest officer previously associated with the Forest Dept. complaint before JMFC.

a) By its order dated 16.08.2006, this Court established the parameters of the enquiry – the TORs, the documents and methodology to be followed. As per the methodology followed by the erstwhile Karapurkar committee, owners of plots could choose to make submissions before the Committee. The same methodology was followed in this case. The Court had already given notice to the Respondents of the Committee and its task. The Court order stated: 'Parties shall be entitled to appear before the Committee.' The onus was on parties if they chose to submit. The Court did not direct the Committee to give notice to the respondents. Neither was it directed to give dates and timings for hearing their say in the matter. It was entirely left to the parties to approach the Committee / Member Secretary if they wished to be heard / had any submissions to make. There is no failing of the Committee on this count.

b) The Resp Nos 8-52 did not make a request to be heard. The Resp No. 6 received a notice because the R-6 was the owner of the plot when the destruction of the forest occurred. and the Committee was required to consider the circumstances of the tree felling of 2001 as well.

c) Resp Nos 8-52 had purchased their plots after the property forest had been clear-felled, levelled and sub-divided. Hence, they could not have knowledge of the forest on the land prior to the felling. At any rate, none of them chose to request for a hearing, though represented by counsel. It is not their case that they sought a hearing but were denied the same.

d) The argument about the denial of natural justice was made two years after the Expert Committee submitted its report, and it is clearly an afterthought to discredit the report. Had it been made

immediately, corrective action could have been taken at that time itself if the Court deemed it fit to do so. There is no formal challenge to the Report on this ground before the High Court for 16 years either by the Resp No 6 or the Resp Nos 8-52.

e) In *Keshav Mills Ltd.* [(1973) 1 SCC 380], the Apex Court considered a challenge to a decision of the State Govt. to shut down the operations of a company, *inter alia* on the grounds that no formal show cause notice was given to the Company, and the report of the Expert Committee was not shared with the Company, prior to the impugned decision being taken. The Hon'ble S.C. held that concept of natural justice cannot be put in a strait jacket and applied uniformly in all cases [*Para 8*]; that administrative officers have a duty not to act judicially, but to act fairly [*Para 8*]; and that the company having been heard earlier, insistence on a formal hearing would be an empty formality. [*Para 14, 16*]. The S.C. therefore rejected the challenge to the impugned order on the grounds of violation of natural justice.

f) On inclusion of Shri Karkhanis: The Expert Committee was given liberty to consider any further evidence from any other source. Shri M.V. Karkhanis was an officer of the department holding a senior position. He was not involved in the identification of the plot as forest in 1996, but his statement was recorded in the tree felling case. Committee members believed that he could assist the committee, due to familiarity with the case. It is important to note that the Expert Committee report is signed only by the 4 persons of the Karapurkar Committee and not by the co-opted member.

7. **Whether the Tata Judgment applies?**

a) The SC set aside the Expert Committee report in that matter as (i) entirely different criteria were adopted for identifying the plot as forest; (ii) such criteria were rejected earlier; (iii) there is no reasonable nexus with the object; (iv) no explanation / justification for adopting different criteria only for the plot. None of these grounds are objections to the Expert Committee report in this case.

b) In the Tata case, none of the forest officers had identified the plot as forest. It was only the petitioner's case that the plot was forest. This is not so in this petition.

8. **Delay and Laches**

a) Petitioners are private citizens. Neither is connected with the plot in any way. Hence even when Gazette notification for change of zone is issued, they have no reason to object to the same. More than 2400 such notifications have been issued for change of zone over the years and it is not possible for citizens to be aware of the status of all lands in Goa.

b) At any rate, the change of zone of the plot under the Regional Plan in 1997-98 is not an order for diversion. Several private forest areas have been wrongly zoned as settlement, or as orchard areas. This is liable to be corrected in RP revision once the plot is identified as forest. This court in *Salgaoncar* has held that wrong identification in the land records would not affect forestry status. Even in 2022, there are several areas zoned as settlement in RP 2021 which have been identified as forest and the Sy Nos. are notified in the Gazette. [*Chart submitted on 17.02.2023*].

c) Petitioners first became aware in 2001-02 after the felling of the trees when petitioner No. 1 was called as a witness. The petitioners were not aware of orders for sub-division of the plots and even the conversion sanad, as these are not public documents and are not placed in the public domain.

d) It is only because petitioners were aggrieved by the fact that decimation of a forest of 7.6 ha resulted in a petty fine of Rs.1000 that the petitioners approached this Court within months of the JMFC's order.

e) Although the Forest Dept. is a member of the Town and Country Planning Board, there is no proof that the Forest Dept was present when decision for change of zone was taken or that the Forest Dept specifically gave its NOC to the change of zone. Expert Committee has examined this aspect *[pg 370]*. The Court had asked for the report of the site inspection of the plot by Town Planning and was informed that the file is missing*[pg 196-197]*. At no time has the Forest Dept., when specifically asked on the status of the plot, ever said that it is anything else but forest.

9. On reliefs which this Court ought to grant:

a) Petitioners have sought cancellation of the Sanad. Hence parties who have invested in the plots / paid monies should be refunded their amounts with interest and with liberty to take civil recourse in law for further compensation if they choose to do so.

b) During pendency of the petition, some illegal constructions have allegedly come up on the property without permissions and without leave of this Court in terms of the order dated 17-06-2003. These structures must be identified and demolished, and the land should be restored to original forestry status with appropriate amount to be paid by the Resp No. 6 towards rehabilitation costs.

c) However, 3 parties have constructed with leave of the Court. Their constructions would naturally be subject to the final outcome of the petition. Nonetheless this Court may also consider the course of action adopted by the Supreme Court in a similar case, discussed below.

d) In *MC Mehta vs. Union of India* [(2018) 18 SCC 397), the Apex Court had the occasion to consider the question on reliefs to be granted in a case not too dissimilar on facts, where massive constructions were put up in forest Areas in violation of the FCA 1980 in the Arawalli Hills region in Haryana - exorbitant monetary amounts were paid by citizens for purchase of residential

flats – the Hon'ble SC distinguished between 2 categories of people using a cut-off date - saving only certain constructions, and directing for demolition of all constructions beyond the cutoff date, with refunds to be paid by builder to homebuyers - SC expressed utmost sympathy with homebuyers duped and led down the garden path by Developer - but ultimately upheld rule of law and statutory prohibition on diversion of forested land [*Paras 126 - 136*]

e) In the event this Hon'ble Court comes to the conclusion that the HC Expert Committee Report cannot be relied upon on account of the violation of the principles of natural justice or for any other reason, it is submitted that the course of action to be taken by this Hon'ble Court would be covered squarely by the order of this Hon'ble Court of August 2006.

f) After considering all of the available records as of 2006, which included multiple expert opinions and reports [*1996 forest reports; Sawant Report; Karapurkar Report; Joshi report and 2001-2002 tree felling case related documents*], the High Court was of the opinion that a definitive answer on the forestry status of the plot was required to be looked into by persons having expertise in the field. This Hon'ble Court did not choose to consider one set of reports as against the other, and rightly so, in the Petitioners view, as the expertise of this Hon'ble Court lies elsewhere and not in forestry matters.

g) To resolve the issue, a HC appointed Expert Committee was constituted. This course of action of the HC in 2006 was not challenged by any party, and has therefore attained finality. Hence, if the Court does not wish to accept the HC Expert Committee report, the order of the High Court of August 2006 would prevail, as the only evidence available in the records produced before this Court is that the plot was identified as forest as early as 1996.

Judgments cited:

1. *Shivanand V. Salgaocar vs. Tree Officer, W.P. 162 of 1987 [dt. 27.11.1990]*
2. *TN Godavarman Thirumulkpad vs Union of India, (1997) 2 SCC 267*
3. *Keshav Mills Ltd. v/s UOI [(1973) 1 SCC 380]*
4. *MC Mehta vs. Union of India [(2018) 18 SCC 397]*

Submitted by Adv. Norma Alvares
for the petitioners on **18.02.2023**

(16) Ann-3

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BEFORE THE KARAPURKAR COMMITTEE

Sandeep Azarekar & anr. .. Petitioners

V/s

State of Goa & ors. .. Respondents

SYNOPSIS OF SUBMISSIONS MADE BEFORE THE COMMITTEE APPOINTED BY THE HON'BLE HIGH COURT IN WRIT PETITION NO.344/02 IN THE HEARING GIVEN TO RESPONDENT NO.6 ON 16-11-2006

a) Admittedly before conversion of entire property bearing Survey No.100/0 from Orchard to Settlement under the provisions of the Town Planning Act, an area of 5,254 sq.mts. of the said property was a Settlement Zone.

b) The property adjoining the said property was a settlement namely the property bearing Survey Nos.101, 102/2 and 103 was a fully developed settlement of village Ella. The property bearing Survey No.100/0 abuts the National Highway NH17 except for the entire property bearing Survey No.100 on both sides of the road they have been fully development settlements.

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c) The settlement in adjoining property bearing Survey No.102/2 consisted of about 100 tenements located in multi-Society buildings.

d) In the survey records maintained under the Land Revenue Code, the said property bearing Survey No.100/0 was shown as a garden - Page 209 of the Petition.

e) The area earmarked in the zoning plan as a settlement of an area of 5254 sq.mts. where the residential house of the Respondent No.6 and his family is situated. The rest of the property was shown as an orchard in the Zoning Plan.

f) The Karapurkar Committee and the Sawant Committee on inspection and on application of mind considered forest areas in the entire Goa and in the Ella village where the said property bearing Survey No.100/0 of the village of Ella is located.

g) The properties identified as forests in the village of Ella are set out in Karapurkar Committee's Report as well as Sawant Committee's Report.

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h) Obviously the said identification was effected on application of mind and inspection of sites. The said property was not identified as forest.

i) The Respondent No.6 by application dated 20-6-96 sought for change of Zone of the said property bearing Survey No.100/0 from Orchard to Settlement use.

j) The Town and Country Planning Board consists of members representing various interests, including inter alia a representative of the Forest Department who on following the procedures prescribed under the law which included site inspection and on invitation of public objections, the Town & Country Planning Board deliberated to change the Zone, from Orchard to Settlement.

k) Prior to the change of Zone on 14-11-96, the Forest Department granted permission to Respondent No.6 to cut 23 trees from the said property bearing Survey No.100/0, which were in fact cut.

l) No doubt in proceedings initiated in the year 2002, the Forest & Tree Officer alleged that 609 trees were cut by

h

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the Respondent No.6 and initiated proceedings under the Trees Act in Complaint No.116/0A/02/C and in one of the statements, stated that the said property be considered as forest. The said statement does not correspond to the factual statement in the light of the facts aforestated and also if one considers the criteria laid down for considering a property within the meaning of the Forest Act as laid down by the Hon'ble Supreme Court in the case of Godvarman Thirumulpad v/s U.O.I.

m) The Affidavit/Report filed by Dr. Ashok Joshi, environmental scientist, on the said property which is in the Court file at Page 326 is based on the inspection of the said property and surrounding areas and on the Panchanama Report of the Forest Officer in criminal proceeding No.116/0A/02/C of the trees alleged to have been cut by the Respondent No.6 establishes that the said property would not constitute it to be a forest as it does not fall in the criteria set out by the High Court in its order dated 16-8-06. In fact the findings are arrived at on the basis of girth and height of the trees referred to in the Panchanama and the length of trunks of the alleged trees.

n) It is pointed out in the course of the hearing and photos produced by the Petitioners themselves in Court in support of their claim give a visual evidence of what Dr. Ashok Joshi has reported in his Report as to the type of trees which were existing in the said property bearing Survey No.100/0.

o) The findings arrived at by Dr. Ashok Joshi are that the said property does not have adequate canopy density, adequate species of forest trees to constitute it a forest, i.e. the size of the trees and their crowns are small and that crown density be about 5% to 10%.

p) An adjoining property which is on the western and on the southern boundary of the property bearing Survey No.100/1 and which stretches to a depth of 150 mts. of the said property bearing Survey No.100/0 and the southern boundary has been developed into another settlement which would house about 200 tenants.

q) The three criteria laid down by the High Court, i.e. (1) that the plot size should be at least 5 hectares or it should be contiguous to Government land is not satisfied for the reason that the said property bearing

Survey No.100/0 is not contiguous with Government forest land. In fact, it is contiguous with human settlement.

r) The second criteria is that 75% of the trees should be forest trees. In this case total trees allegedly cut were 196 out of which only 53 trees were forest trees which is less than 30%. Even otherwise, it is allegedly reported that 266 trees were alleged to be cut out of which 90 trees are forest trees which percentage is less than 35%. Therefore the 2nd criteria is not fulfilled.

s) The third criteria as stated above, i.e. the crown density should beat least 40% or more. However, in this case as set out in the Report of Dr. Ashok Joshi at page 345 of the Petition, the crown density is between 10 – 12%.

t) The Report of Dr. Joshi also shows various other aspects why the said property cannot be considered as forest. The Report is at Pages 326 to 381 which shows the methodology, location, salient features of the site and surroundings, soil, vegetation and so on.

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u) In the light of the above facts it is evident that the property was on a consideration of facts not identified as a forest by these two Committees. And hence it is not a forest within the meaning of the Forest Act and under the criteria laid down to that effect.

Panaji,

21 -11-2006

Respondent No.6

(17) ~~169~~

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IN THE HIGH COURT OF BOMBAY AT GOA
PANAJI BENCH

Writ Petition No.344/2002 (under article 226 of Constitution of India).

Sandeep Azrenkar & Anr. ..... Petitioners.

V/s

State of Goa & Ors. .....Respondents.

To,
The Assistant Registrar
High Court of Bombay,
Panaji Bench, Goa.

Sub: Report pursuant to Order dated 16/08/2006
Ref: Your letter No.J/WP-344-02/5054/2006 dated 20/09/2006.

Madam,

With reference to the above, I the undersigned, Dr. H.Y. Karapurkar, have the honour in submitting herewith the report which has been prepared by the Committee appointed by this Hon'ble Court vide its above mentioned Order. The report has been prepared within the scheduled time limit of three months as per the Order. The same may kindly be placed before the Hon'ble Court.

With regards,

Yours sincerely,

(Dr. H. Y. Karapurkar)

Place: Panaji.
Dated: 15/12/2006.

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REPORT SUBMITTED BY COMMITTEE CONSTITUTED BY HON'BLE HIGH COURT OF BOMBAY, GOA BENCH REGARDING WHETHER LAND UNDER SURVEY NO. 100/0 OF ELLA VILLAGE IN TISWADI TALUKA WAS A FOREST LAND OR NOT.

PANAJI

DATED : 14/12/2006

1. CONSTITUTION OF THE COMMITTEE

The Hon'ble High Court of Bombay, Goa Bench, constituted this Committee vide its Order dated 16/08/2006 in Writ Petition No.344 of 2002, in order to seek expert opinion, looking to the consensus between the parties, to examine and report as to whether the land bearing Survey No.100/0 of village Ella of Tehsil Tiswadi, District North Goa was earlier forest but stands degraded, denuded or cleared.

Members of the Committee are as under :-

1) Dr. H.Y. Karapurkar - Chairman
2) Conservator of Forests -Member (Shri. C.A. Reddy IFS)
3) Dy. Conservator of Forests (South Goa) - Member (Shri. M.K.Biddi)
4) Dy. Conservator of Forests (North Goa) - Member Secretary (Shri. F.X. Araujo IFS)

The above Court Order was communicated to the Committee under letter No.J/WP-344/02/5054/32006 dated 28/09/2006.

The criteria earmarked the identification of properties as forests are :-

i) 75% of the composition should be forestry species.
ii) Area should be contiguous to Government forests and, if in isolation, should be more than 5 Hectares.
iii) Canopy density should not be less than 0.4

2. BACKGROUND

The Committee Members appointed by High Court of Bombay, Goa Bench are all technical Officers well conversant with Tree

Life and Environment. Chairman Dr. H.Y. Karapurkar has a B.Sc. degree in Botany from Bombay University, M.Sc. degree in Botany from Pune University and a Doctorate Degree in Agricultural Sciences from Goettingen University, Germany. He has put in 32 years of service with Government of Goa in various senior Positions like Director of Agriculture, Director of Rural Development Agency, Chairman cum MD of Goa State Horticulture Corporation and Chairman of Goa Public Service Commission.

Recently he was appointed as Chairman of Two State Level Committees to study Mahadei and Netravali Wildlife Sanctuaries and to identify private Forests in Goa State. Both these Reports were prepared within the time limit given and accepted by the Government of Goa. The Conservator and both the Dy. Conservators are Experts in the field of forestry and have extended valuable contributions in preparing the Report.

3. METHODOLOGY AND BUSINESS CONDUCTED BY THE COMMITTEE :

The Committee followed the methodology employed by the earlier Sawant Committee and Karapurkar Committee. The Committee co-opted Shri. M.V. Karkhanis, the Asst. Conservator of Forests, Legal Cell, as he was conversant with the case since beginning. The Committee held 9 meetings in the Chamber of Conservator of Forests. The Committee visited the site i.e. the land under survey No.100/0 of Ella Village, Old Goa on two occasions for inspection. Interested parties i.e. the Respondent No.6 and the Petitioner were heard in person by the Committee. Besides, the Committee requested them to submit

their views in writing, which they did. The committee also heard the Forest Officers connected with the matter. The Committee requisitioned and received copies of the various documents from the records of Directorate of Survey and Land Records, Office of the Dy. Conservator of Forests and Tree Officer of North Goa at Ponda, office of the Dy. Conservator of Forests, Working Plan Division, Panaji-Goa.

4. RELEVANT EVIDENCE RECEIVED AND CONSIDERED

Following is the list of the relevant documents received and considered by the Committee to examine the issue:-

i) Land Index Form I & XIV (old) of survey No.100/0 of Ella Village of Tiswadi Taluka.

ii) Application dated 12/9/1996 of the land owner to the tree Officer for felling of trees in the property under Rule 4—I of Preservation of Trees Act, 1984.

iii) Report of the Range Forest Officer Panaji.

iv) Report of the Asst. Conservator of Forests, North Goa Division — ?

v) Indemnity Bond 12/11/1996 sworn by the Land Owner.

vi) Tree felling permit dated 14/11/1996.

vii) Conversion Sanad dated 14/04/2000

viii) Provisional NOC dated 28/09/2000 of Town and Country Planning Department for the proposed sub division of the land.

ix) Panchanama dated 14/02/2001 of the site of land under survey No.100/0.

x) Order dated 17/06/2002 of the Trial Court against the land owner in Criminal case No.116/08/2002/C.

(xi) Environmental and Forest status report of Dr. Ashok Joshi.

(xii) Written submission of the Respondents (i.e. the land owner)

(xiii) Written submission of the Petitioners.

(xiv) Minutes of the Meetings of the Committee.

(xv) Minutes of the field trips of the Committee.

(xvi) Photo prints of the photographs taken of the site by the Committee during its field visits to the plots under survey No.100/0 of Ella Village on 7/11/2006.

Also aerial images

6. **DETAILED DELIBERATIONS**:

The Committee started collecting the evidence from the Forest Department itself. The Dy. Conservator of Forests, North Goa, produced before the Committee various relevant records available in his Office which are as follows:-

1. Application for felling under Rule-4-1 P.T.A. 1984 : Shri Satish V. Bhandari applied on 12.9.1996 to the Tree Officer to cut 60 trees in 1 Ha. area of Sy.No.100/0. In the application in Column-6 he has given the total number of trees existing in Sy.NO.100/0 as Teak-200, Mango-30, Bombax-200, Jungle-500, Coconut-30, Cashew-300 which comes to a total of 1260. The area of the survey number is 7.69 Ha. The list enclosed to the application gives 14 species of trees. 60 trees per ha.

2. The Report of the Range Forest Officer, Panaji : The Range Forest Officer, Panaji submitted his report after his inspection of the Sy.No.100/0. In the report whether Forest (Conservation) Act is applicable or not, the R.F.O. has recorded – Yes. The total area is

forest in nature and extent of area is more than 5 Ha. Hence F.C.A. is applicable. Subsequently the R.F.O. has amplified his report clarifying that the vegetation consists of naturally grown forestry species like Sirus, Tirfal, Tamarind, Dabon, Teak, Mirio, Karanj, Moi, Pangara, etc., alongwith bamboo and cashew. He further states that the vegetation is forest in nature and very dense, as such he confirmed that Forest (Conservation) Act is applicable.

Report of Assistant Conservator of Forests (North Division) : The Dy. Conservator of Forests, directed the Asstt. Conservator of Forests who is above the rank of the Range Forest Officer to inspect the site and to give his comments on 21.9.1996. The Asstt. Conservator of Forests after inspection has reported that the area is more than 5 Ha., it is fully covered with tree species and the canopy density is 0.7 to 0.8.

Indemnity Bond : On 12th November, 1996, Shri. Satish V. Bhandari has furnished an Indemnity Bond sworn before the Notary H.P. Gudekar at Ponda that he will replant the trees in the same property after cutting and transporting the existing standing trees. He has also sworn that he will not develop the said property into plots.

Felling Permit : On 14.11.1996 permission for felling 23 trees was given to Shri Bhandari by the Tree Officer, North Goa Division Ponda under the condition that double the number of felled trees of miscellaneous species will be planted by him. It is also mentioned in the body of the permit that he will be liable for legal action if the land is diverted for non-forestry purpose.

The above documents show the status of the vegetation in 1996 as under:-

1. The area of the plot is 7.96 Ha. whish is more than 5 Ha.
2. The crown density was 0.7 to 0.8.
3. At least 14 forestry species viz. Teak, Jack, Tamarind, Tirfal, Siras, Moi, Pangaro, Mango, Daban, Irai, Patponos, Jamun, Jungle, Mirio, Karanj, besides forestry species, were bamboos & Cashew. This status was accepted by Shri. Bhandari.

6. Conversion Sanad : Shri. Bhandari obtained the conversion sanad on 14/4/2000 from the Dy. Collector & S.D.O. Panaji to convert the land under Sy.No.100/0 for residential purpose. The sanad was granted subject to certain conditions. Condition-2: states the existing trees if any shall not be cut unless the permission from the Forest Department is obtained and double the number of trees shall be planted in the area applied for conversion. The records do not show that Shri. Bhandari applied for a felling licence after 14/4/2000.

On 18.2.2001 the site of Sy.No.100/0 was inspected and the list was prepared of the vegetation at the site. 609 stumps of trees which were cut and 196 standing trees were found on the Sy.No. Besides this thousands of Bamboos were lying around, and cut wood had been burnt over the whole area.

N.O.C. of Town & Country Planning : The Town & Country Planning Department gave a provisional N.O.C.. on 28/9/2000, for the proposed sub-divisional land in Sy.No.100/0 of Ella Village. Condition-2 of this N.O.C. states that necessary permission should be sought from the Forest Department before the cutting of trees. No permission was sought from the Forest Department after this N.O.C.

Order of the Trial Court : The case for illegal felling was filed against Shri. Bhandari under No.116/0A/2002/6 in the substance of accusations Shri. Bhandari was accused of cutting 609 trees, thousand of bamboos and bushes in Sy.No.100/0. Shri. Bhandari was found guilty under Section of 8 of the P.T.A. and was fined Rs.1000/- on conviction.

Comments of DCF (North) on the report of forest status of Dr. Joshi : The Dy. Conservator of Forests North Goa Division, was entrusted with the job of looking into the contentions made by Dr. Ashok Joshi in his forest status report. The Dy. Cconservator of Forests, North has commented mainly on the criteria for judging the area as forest which have been propounded by Dr. Joshi.

Dr. Joshi, had worked out that there existed 1 tree for 270 Sq.mtrs. based on a wrong assumption. The list of stumps shows that 609 trees were cut. A stump is the part of the tree which remains attached to the ground when the tree is cut and detached from it. Dr. Joshi has mistaken the stump measurements to be measurement of branches

lying around. The contention of Dr. Joshi that there existed 1 tree for 270 Sq.mtrs. is therefore not correct.

The average size of the crown is 60 Sq.mtrs. per tree: As pointed out by DCF North that the crown coverage of the tree on the open ground will be greater than that of a tree of the same girth in the midst of other trees. This was verified during a visit to the site on 14.10.2006. A tree having girth of 63 Centimeter was found to have the crown radius of 5 to 6 mtrs. Taking an average of 5.5 mtrs. Radius, the crown coverage of this tree is 95sq.mtrs. It was considered just 805 trees (609 + 196) the total crown coverage works out to 76,532 sq.mtrs. (7.65 ha.). This is excluding thousands of bamboos and the palms which were destroyed and not counted among the trees. This gives a crown density of 0.921. (nearly 100%

The contention that forestry types species in Goa are only 52 in number is made by Dr. Joshi based on the Goa Gazetteer of 1980. The DCF North has stated that the working of the Forest Department is guided by the Working Plan which has a list of over 800 trees and other forestry type species.

The contention that the Land Revenue Records describe Sy.No.100/0 as Orchard and Bharad Land. The DCF (North) has clarified that the Land Revenue Code does not have a classification as "forest". None of the lands identified as private forests by the Sawant and Karapurkar Committees are shown as Forest in the Land Revenue Code.

10. **No Evidence of Harvesting Bamboos :** DCF (North) has further stated that permission is required for transporting bamboos. Shri. Dhandari has never applied for transportation of the bamboos from the said area which he would have done if he was harvesting bamboos artificially.

11. **SITE INSPECTIONS :**

The Committee inspected the site on 14/10/2006 and 7/11/2006.

During the site inspection the following was observed.

The area except for the developed roads is thickly vegetated. The crown coverage minimum to a height of 5 – 10 mts.

There is profuse growth of bamboos, interspersed with the forestry species.

At least 15 varieties of forestry species were counted, from the roadside. No horticultural species were seen. Trees have sprouted from old stumps.

12. **Personal Hearing To Respondent :** The Respondent submitted his say on 21.11.2006. The points raised by Respondent at Paragraphs Nos. d, e, k, l, m, o, q, s, and t have already been discounted in the comments above.

The contention at a, b & c that survey number is surrounded by developed plots or orchard/garden cannot have a bearing on this plot. Any plot which is over 5 Ha. and fulfilling the other two criteria is a forest.

At Paras f & g, it is contended that Karapurkar and Sawant Committees have inspected forest areas in entire Goa and have not identified Sy.No: 100/0 as a private forest. This is not correct as both the above cited committees in their reports have accepted that the areas listed by them are not extensive and more areas may remain which fulfill the above criteria of forest.

Contention of Para-j, that Forest Department was a party to the N.O.C. from Town & Country Planning Department. No evidence is adduced that the TCP asked for comments of the Forest Department.

As regards Para-I, even though the Respondent sought change of Zone and the same was granted it was subject to the condition that permission of the Forest Department shall be taken for felling of trees. There are no reasons why the respondent could not ask for permission of Forest Department.

As regards Para-n, the photographs are of no help to the respondent as they exhibit the destruction carried out in the Survey Number. The photographs were taken after all the trees in the plot had been cut.

As regards Para-p, the adjoining areas may not have been fulfilling the criteria of private forest.

The contention of Para-r, is that only 53 trees out of 196 were forestry species. The contention is based on wrong assumptions. A reading of the list will show that several trees are shown as jungli trees. Jungli tree is not a term defining one species but includes several species which are not separately named as their economic value in terms of timber or firewood is negligible for various reasons. Therefore it cannot be stated that whenever jungli tree is recorded, it refers to just one species. Secondly in the inspections report where 609 stumps were enumerated, exact identification of the trees was not possible, as the features like leaves, fruit, flowers were missing.

13. Comments on the Statement of the Goa Foundation – Petitioners: The contentions made by the Goa Foundation in the paragraph-i, ii, iii, k, v & 4, 5 & 6 are already discounted in the discussion above.

As regard para-iv it is a fact that the DCF noted this area as an important dry deciduous forest in the complaint before the Court.

As regards para-vi the Chief Conservator of Forests in his affidavit on 13/12/2002 before this Hon'ble Court has also stated that the property fulfills the criteria necessary for a private forest.

As regards para- 1 to 3 : The contentions are correct.

Dr. G.T. Kumar — pg 384

14. The Dy. Conservator of Forests, Working Plan Division, placed before the Committee the **aerial photographs** of the area taken in the year 1998. Incorporating the same on the Survey Plan of Ella-

Village and sighting the portion of survey No.100/0 therein, it was seen by the Committee that the total geographical area of survey No.100/0 consisted of forest vegetation.

6. FINDINGS :

The property Survey No.100/0 of Ella Village meets the requirement of the criteria for a private forest.

1. **Area of the Survey Number is more than 5 Ha.** Criteria one is that the area of an isolated plot should be at least 5 Ha. The area of the survey number 100/0 of Ella Village, as shown in the application form B in 1996 by Shri. Bhandari is 7.96 Ha. The area has not been contested by anyone. Hence the plot of survey number 100/0 of Ella Village fulfils the first condition.

2. **More than 75% of the composition should be forestry species.** In form B in 1996 Shri. Bhandari has stated that there are 1230 trees standing in the plot, of which 30 are listed as coconut palms. The other species mentioned are Teak, mango, bamboo, cashew etc. Bamboo is a tree and a forestry species as per the definition in the Indian Forest Act 1927. The only species of horticultural nature are coconut and cashew. Other varieties of palms come under forestry species, as they are not cultivated for their horticultural value. The 53 trees listed for felling in form B were of 14 species. So in 1996 14 species out of 16 were forestry species, which is over 87%. The list of standing trees of 2001 shows 196 trees, which are of 16 spp. The list of stumps shows 609 trees, of which over 300 trees have been listed as jungli, as

they could not be correctly identified from the stumps alone. The name jungli does not refer to one species alone, but would have been many different species. The stumps denoted other than jungli are of 34 species. No horticultural species has been recorded. Needless to say this same composition must have been there in 1996, when only the economically important species were enumerated. During the inspection of the committee to the site, it was seen that the area which is not occupied by tarred roads, if fully stocked and is impenetrable. All species are natural forestry species. Just a casual count showed 16 forestry species. Therefore the composition of forestry species is 34 out of 36 (34 forestry and 2 horticultural of 1996.) Which is over 94%. Therefore the crop composition from 1996 fulfils the second criteria, as it is over 75%.

3. **The crown density is more than 0.4.** The report of the RFO Panaji dated 6/11/96, on the application in form B, states that the vegetation of forestry nature is very dense. The observation dated 30/09/96 of the ACF recorded in the file states that crown (also called canopy) density is 0.7 to 0.8. During the inspection by the committee the crown density was noticed to be over 0.9. Therefore the area meets the requirement of crown density.

4. **In the year 1996,** when the permission for felling 23 trees was given it was clearly reported by the RFO, that the area attracts the Forest Conservation Act, since the nature of vegetation is of forestry nature, and Shri. Bhandari accepted this and gave and Indemnity Bond stating that he will not develop the property into plots. The licence issued on 14/11/1996, also cautioned Shri.

Bhandari that he should not divert the land for non-forestry purpose, and that he would be liable for legal action if he did.

CONCLUSION :

In view of all the forgoing considerations, the Committee has come to the conclusion that the land under Survey No.100/0 admeasuring 7.69 Ha. of Ella Village. was a forest and has been clearfelled during or before the month of January 2002.

1) Dr. H.Y. Karapurkar - Chairman

2) Conservator of Forests - Member (Shri. C.A. Reddy IFS)

3) Dy. Conservator of Forests - Member (Shri. M.K.Biddi)
(South Goa)

4) Dy. Conservator of Forests
(North Goa) - Member Secretary (Shri. F.X. Araujo IFS)

ANNEXURES

1. Copies of the Minutes of the Meetings.

2. Copies of field trip observations.

3. Copy of the written submission of the Respondents.

4. Copy of the written submission of the Petitioners.

5. Copy of the Indemnity Bond given by the land owner.

6. Photo prints of the photographs of the site taken during field visit on 7/11/2006.

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MINUTES OF THE 1ST MEETING OF THE COMMITTEE HELD ON 09/10/2006

The committee constituted by Hon'ble Bombay High Court Goa Bench had its first meeting on 09/10/2006 in the office Chamber of the Conservator of Forests, Panaji. In addition to the Chairman of the Committee, the following members attended the said meeting.

(1) Conservator of Forests, (Territorial and Wildlife & Eco-Tourism), Panaji.
(2) Dy Conservator of Forests, North Goa Division, Ponda.
(3) Dy. Conservator of Forests, South Goa Division, Margao.

The Asst. Conservator of Forests, Legal Cell, Forest Department, Shri M. V. Kulkarni also attended on request as he had handled the case earlier and has relevant documents & knowledge of the matter and of the plot under survey No.100 of Ela, Old Goa.

Chairman at the outset welcomed all present and put before them the point of reference of the Committee i.e.- "Whether the subject land bearing survey No.100/0 admeasuring 76,900 sq.mts situated at village Ela of Old Goa was a Forest Land which now stands cleared and denuded. Chairman brought to the notice of members that discrepancies in the figures quoted in the Hon'ble High Court's Order regarding the total area of the plot, under survey No.100/0 which should be read as 76,900 sq. mts. or 7.69 Ha. instead of 1,223.73 sq. kms.

He further informed the Members that he had the opportunity to function as the in charge of the Agri-Horticultural Research Station – (Ela Farm) at Ela during the years 1966-1968 and he had a fair knowledge of the Forest cover in the Region from St. Cruz covering Baiguinim, Old ,Goa, Ela up to Corlim. The scenario has totally changed now with denudation of forest cover during the last 20-30 years. He requested the Member Secretary to collect all documents such as I & XIV Form, a Survey Map of the land and other correspondence between Govt. and owners of the land such as permission for felling trees, any commitments given by owners, photographic evidence indicating remains of tree stubble's and stumps, etc. It was further decided to make a field visit to the

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377 ~~458~~

This pg same as pg 490 (380)

4) Interestingly, the conversion sanad under No.CNV/TIS/15/2000 dated 4/4/2000, issued by the Collectorate, states that the following number of trees existed in the said land –

i)	Teak	– 3
ii)	Mangos	– 3
iii)	Suiras	– 2
iv)	Tamarind	– 1
v)	Cashew	– 7
vi)	and others	– 5

The Sanad has eight conditions, of which condition 2 states – " the existing trees, if any, shall not be cut unless the authority concerned i.e. permission from the Forest Department obtained and double number of trees shall be planted in the area applied for conversion." The sanad has granted conversion for the whole survey no.100/0.

5) The Sarpanch of village Panchayat Old Goa has given provisional NOC for the sub-division of the land in survey no.100/0 of Ellla village vide his communication number TIS/1957/ELL/2000/630 dated 28/09/2000, in which there are 28 conditions. Condition no. 2 states, " necessary permission should be sought from the Forest Department before cutting the trees". The above condition is underlined in the communication to stress its importance.

6) The Judicial Magistrate First Class at Panaji, Goa, in his order dated 18/06/2002 in Criminal Case No.116/OA/2002/C, holding guilty the accused Shri Satish V. Bhandari and Shri Ramchandra S. Gohil, for contravening section 8 of Goa, Daman & Diu Preservation of Trees Act, 1984 and sentencing them, says in the 'SUBSTANCE OF ACCUSATION' – " - - that the Range Forest Officer visited the place Dotor Bhat at Ella, Old Goa alongwith his staff and panchas on 14/02/2001 and found that 609 trees, thousands of bamboos and bushes were cut down over an area of 7 hacts. and the hills sides were cut off vertically at many places to make networks of roads and that most of the cut woods alongwith bamboos were burnt from the land bearing survey no.100/0 of Ella, Old Goa belonging to accused no.1 Satish Bhandari and got cut all the trees, bamboos and bushes from the said land and the said seized timber logs depositing with you for safe custody, from the labourers for developing purpose. - -".

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This is same as pg 491 (381)

Chairman Dr. Karapurkar suggested that a fresh visit be made to the site of the plot and all points be marked on the map such as layout of internal roads, details of vegetation such as bamboo's etc., Tree stumps, any topographical details, the location of three bungalows, etc.,

It is observed from existing records with the Forest Department that the landlord of the plot had sought permission to cut vegetation in 1.00 Ha. Area and also given an Indemnity Bond that after clearing the area he would restore the area with new plantation.

Records show that he ~~could~~ did not fulfil this assurance and no fresh trees were planted. The uppermost (northern) part of the plot was found to be levelled with bull dozer.

Asst. Conservator of Forests, Shri Karkhanis placed before the Committee a report prepared by Dr. Ashok Joshi, an Environmental Scientist, who's services seem to have been hired by the land owners for preparing the report. The same report was, in fact, filed by the land owners in the Hon'ble High Court (Goa Bench) in the instant case. Conservator of Forests opined that this report is needed to be studied in details by all members of the Committee and submit their individual opinion on the said report in the next meeting of the Committee which is fixed on 21/1/2006 at 10.30 a.m. in the chamber of Conservator of Forests.

1) Dr. H. Y. Karapurkar

2) Shri C.A. Reddy
Conservator of Forests.

3) Shri F.X. Araujo,
Dy. Conservator of Forests, North Goa Division.

4) Shri M. K. Biddi,
Dy. Conservator of Forests, South Goa Division.

5) Shri M. V. Karkhanis
Asst. Conservator of Forests, Legal Cell.

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MINUTES OF THE 2ND MEETING OF THE COMMITTEE HELD ON 19/10/2006

The meeting was attended for the first time by Shri F.X. Araujo, Dy. Conservator of Forests, North Goa, the regular incumbent of the post. (He could not participate in earlier meeting and also field visit since he was out of Goa on a Training Programme at Dehra Dun).

Dy. Conservator of Forests (North), Shri Araujo produced a Map of the plot under Survey No.100/0 and submitted various data to the Committee which were in his possession.

These details include:-

1) In all, 609 trees were illegally felled in the property in the year 2001. After that, 196 unfelled trees were still standing in it.

2) Shri Satish Vinayak Bhandari, the owner of the plot, had applied for permission to fell trees in the property survey No.100/0 of Ella, Old Goa on 12/09/1996. In the application Shri Bhandari had mentioned –" the total number of trees existing in the said property is –

Teak	–	200
Mango	–	30
Bombax	–	200
Jungli	–	500
Cashew	–	300
Coconut	–	30
(Total	–	1260)

Shri Bhandari had applied for permission to fell 58 trees in this property. However, he was granted permission to fell only 23 trees for which he had given an undertaking, through an Indemnity Bond, that he would replant the trees in the said property after the felling. He had also given undertaking that he would not develop the said property into plots.

3) As per the report dated 6/11/1996 of the then Range Forest Officer, Panaji, the said land under survey no.100/0 of Ella, Old Goa attracted Forest Conservation Act, 1980. And that is the reason for taking Special Indemnity Bond from the applicant that he would replant after felling silviculturally mature trees as permitted by Tree Officer under the Provisions of Preservation of Tree Act 1984. It was also specially mentioned in the said Bond that he would not develop the said property into plots.

380 490

4) Interestingly, the conversion sanad under No.CNV/TIS/15/2000 dated 4/4/2000, issued by the Collectorate, states that the following number of trees existed in the said land –

i)	Teak	– 3
ii)	Mangos	– 3
iii)	Suiras	– 2
iv)	Tamarind	– 1
v)	Cashew	– 7
vi)	and others	– 5

The Sanad has eight conditions, of which condition 2 states – " the existing trees, if any, shall not be cut unless the authority concerned i.e. permission from the Forest Department obtained and double number of trees shall be planted in the area applied for conversion." The sanad has granted conversion for the whole survey no.100/0.

5) The Sarpanch of village Panchayat Old Goa has given provisional NOC for the sub-division of the land in survey no.100/0 of Ellla village vide his communication number TIS/1957/ELL/2000/630 dated 28/09/2000, in which there are 28 conditions. Condition no. 2 states, " necessary permission should be sought from the Forest Department before cutting the trees". The above condition is underlined in the communication to stress its importance.

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Chairman Dr. Karapurkar suggested that a fresh visit be made to the site of the plot and all points be marked on the map such as layout of internal roads, details of vegetation such as bamboo's etc., Tree stumps, any topographical details, the location of three bungalows, etc.,

It is observed from existing records with the Forest Department that the landlord of the plot had sought permission to cut vegetation in 1.00 Ha. Area and also given an Indemnity Bond that after clearing the area he would restore the area with new plantation.

Record show that he could not fulfil this assurance and no fresh trees were planted. The uppermost (northern) part of the plot was found to be levelled with bull dozer.

Asst. Conservator of Forests, Shri Karkhanis placed before the Committee a report prepared by Dr. Ashok Joshi, an Environmental Scientist, who's services seem to have been hired by the land owners for preparing the report. The same report was, in fact, filed by the land owners in the Hon'ble High Court (Goa Bench) in the instant case. Conservator of Forests opined that this report is needed to be studied in details by all members of the Committee and submit their individual opinion on the said report in the next meeting of the Committee which is fixed on 2/11/2006 at 10.30 a.m. in the chamber of Conservator of Forests.

1) Dr. H. Y. Karapurkar

2) Shri C.A. Reddy
Conservator of Forests.

3) Shri F.X. Araujo,
Dy. Conservator of Forests, North Goa Division.

4) Shri M. K. Biddi,
Dy. Conservator of Forests, South Goa Division.

5) Shri M. V. Karkhanis
Asst. Conservator of Forests, Legal Cell

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MINUTES OF THE 3RD MEETING OF THE COMMITTEE

HELD ON 02/11/2006 — cannot refer to side view in para 5

Shri F. X. Araujo, IFS, Dy. Conservator of Forests (North), made it clear that in the land records forest is not designated as a class to show the type of ground cover. The SLECs appointed by the State Government in pursuance of the Supreme Court Order (12/12/1996), have identified private forest, wherein, 'forest' was not indicated in the land records. In fact, several private forests identified reflect as 'orchards' or 'Bagayat' in land records.

Dr. G. T. Kumar, IFS, DCF (WP) opined that 'orchard' is maintained with fruit bearing trees of horticultural species and Bamboos cannot be allowed to grow to such an extent in the 'orchard'.

As per record of DCF(N), the total no. of trees existing in Dotor Bhat were 1260 before granting him permission to fell in the year 1996. No. of trees indicating their species When the offence was booked for illegally felling of trees in the said area, during the subsequent investigation, 609 stumps meeting the definition of 'trees' as per the PTA 1984, were found at the site. The stem portion of these trees were cut and removed/ destroyed from the site. At that time, 196 trees were found standing on the site. In addition to this, there were thousands of bamboo's which were cut down and burnt by the owner. It was found at the time of the Panchanama that there was land cutting/ filling existed was also cut, uprooted and burnt and buried under debris, in order to destroy the evidence of their existence. Hence these trees could not be enumerated.

Dr. G. T. Kumar mentioned:-
Out of the total trees (i.e. 609 + 196+23) = 828 only 13 specie of forestry are represented number of trees belongs to as per the report of Mr. Joshi. His contention is that only those species mentioned in Goa Gazette as forestry species are forest trees. But this is not true. As per Supreme Court's direction, naturally grown forestry species anywhere form forests. The Dy. Conservator of Forests, Working Plan also mentioned that the trees species mentioned as non-forest by Shri Joshi in his report are in fact of forest species only. This can be confirmed from the list of forest fauna of Working Plan of Goa Forest Department.

i) Dr. Ashok Joshi, in his report, has referred to preponderance of weed growth in the plot. This report was prepared in the year 2004. The clear felling in the plot had taken place in the year 2001. The preponderance of weed growth is because the clear felling and burning the felled material.

ii) The report mentioned about dichotomous trees. In fact, most of the forestry species are not dichotomous.

iii) As per the panchanama, only the number of stumps (of the felled trees) were counted, and not branches, to arrive at number of trees felled.

iv) A copy of Inspection Report of the forest Officer who accompanied Town and Country Planning party while inspecting the site, has to be obtained from Working Plan Division or (Planning & Statistics) Section (i.e Chief Conservator's final report to TCP in respect with Dotor Bhat, Sy. No.100/0 of Ella, Old Goa.).

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preponderance of weed growth is because the clear felling and burning the felled material.

ii) The report mentioned about dichotomous trees. In fact, most of the forestry species are not dichotomous.

iii) As per the panchanama, only the number of stumps (of the felled trees) were counted, and not branches, to arrive at number of trees felled.

iv) A copy of Inspection Report of the forest Officer who accompanied TCP – party while inspecting the site, has to be obtained from Working Plan Division or (Planning & Statistics) Section (i.e Chief Conservator's final report to TCP in respect with Dotor Bhat, Sy. No.100/0 of Ella, Old Goa.).

5) Visit to the site by the Chairman and Member Secretary at 9.30 on 7/11/2006. The foll. is from Joshi report

pg 336 of Joshi (1) Site is well fenced piece of private land described as orchard in Revenue Records.

This is pg 336 (2) Demographic feature around site shows that it is an extension of adjoining Urban zone and there is no forest in the immediate vicinity oif the site.

pg 337 (3) Bamboo is the most dominant species and unlike random distribution of other vegetation, it is seen in regular formation indicating its deliberate plantation for cultivation purpose.

pg 337 (4) As regards the trees, few are full grown mature trees.The fish tail palm is a dominant species.

(5) The vegetation cover thought dense it consists mainly of deno_____ invading weed species.

pg 342 (6) The plot is known as "Dotor Bhat" means the area is garden or horticultural land.

pg 342 (7) The inquiry revealed that this orchard land was used for commercial bamboo cultivation. The crop was annually harvested and sold by the owner. A dense Bamboo plantation on the adjoining plot and reports about cutting of Bamboos bear testimony of this fact. This is a kind of recognized agro-forestry activity. That gives the impression of a forest though it is not a true forest. Cutting of agro-forestry produce is a permitted legal entity.

pg 343 (8) The number of trees cut works out to only 70. If we add this to the number of existing trees 196 the total number comes to 266,which is one tree per 270 m2.

(9) Criteria laid down by Sawant Committee are not applicable to present area. The subject plot of about 7.00 ha. It is not contiguous to Goa Forest. In fact, it is contiguous with human settlement as seen from road and concrete houses surrounding Sy.No.100/0. 75% of the trees should be forest trees.

pg 344 (not verbatim)

(10) 196 trees are still standing and 609 trees are reported to have been cut.

pg 345

(11) Total number of trees on the site prior to cutting comes to 266.

(12) For 40% crown identity we need to have crown cover of over about 30,000m2.This corresponds to at least 1000 full trees. The plot is a degraded patch of neglected agricultural land that was once used for Bambooo cultivation and is now covered with mainly weed and stray vegetation.

pg 346

(13) As per the forest identification criteria clearly point out that the sit under study is not forest and do not seen to have been forest in the past 35 years since the time cadastral survey was first carried out from 1965 to 1977.

pg 347

6. The 609 trees mentioned in the Panchanama carried out on ____ have been mentioned in form of the stumps, that were existing there at the site, of the felled trees. The stumps, their height and their top girth clearly spells existence these particular trees

7) Dr. G.T. Kumar produced two plates of arial photographs pertaining to Old Goa, including the involved plot no.100/0 of Ella. He mentioned that the same could be interpreted in details to know that type of vegetation existed in the said plot prior to its development.

1) Dr. H. Y. Karapurkar

2) Shri C.A. Reddy
Conservator of Forests.

3) Shri F.X. Araujo,
Dy. Conservator of Forests, North Goa Division.

4) Shri M. K. Biddi,
Dy. Conservator of Forests, South Goa Division.

5) Shri M. V. Karkhanis
Asst. Conservator of Forests, Legal Cell.

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MINUTES OF THE 4th MEETING OF THE COMMITTEE HELD ON 7/11/2006

The following Committee members attended the meeting:-

1) Dr. H. Y. Karapurkar

2) Shri C.A. Reddy
Conservator of Forests.

3) Shri F.X. Araujo,
Dy. Conservator of Forests, North Goa Division.

4) Shri M. K. Biddi,
Dy. Conservator of Forests, South Goa Division.

5) Shri M. V. Karkhanis
Asst. Conservator of Forests (Legal Cell)

The Chairman at the outset informed the members that a visit was made to the site in the morning on 07-11-2006 alongwith Dy. Conservator of Forests (North) and Asst. Conservator of Forests (Legal Cell). The purpose of the visit was to see the present growth of vegetation at site. After walking over the various roads of the property, it was observed that trees of following species have grown there profusely with considerable height and girth. The sample measurements were taken. 63 cms was found to be the girth at breast height (G.B.H) of one of the Trema orientalis trees; its height was ocularly found to be about 6 to 8 mtrs., its canopy radius was 6.00 mts to 6.00 mts.

Some of the tress were inspected particularly at their base i.e. collar position, by removing the wild undergrowth. They were found to have been sprouted from the stumps of the trees cut & felled earlier.

The various species noted are:-

1) Trema orientalis (Indian Charcoal trees),

2) Ficus glomerata,

3) Ficus bengaliensis trees (Vod),

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- Tectona grandis (teak),
- Bombax malabarica,
- Gmelina indica (Pongaro),
- Zizyphus jujuba (bore)
- Pterocarpus marsupium (assan)
- Dendrocalamus (Bamboo) spp.

It was found that two more structures exist in the plot in addition to the three bungalows seen earlier. One is a posh bungalow in South Western corner of the property and a small tile roofed house somewhere in the center of the property.

It was decided by the Committee that the landowner be called for giving him an opportunity to submit his views before the Committee on 14/11/2006 i.e. during next meeting of the Committee. Dr. Kumar is to be requested to submit in writing a study of the property as interpreted from the aerial photographs available in his office.

Map and revenue records to be collected from DSLR.

A copy of the CCF's office report sent to TCP on the said property is to be collected from the CCF's or WP's office.

To confirm whether the vegetation in the property conforms to the criteria of private forest as fixed and followed by the Sawant Committee and Dr. Karapurkar Committee.

To collect further evidence, photographs of the various aspects of the vegetation were taken on site.

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MINUTES OF THE 5th MEETING OF THE COMMITTEE, HELD ON 16/11/2006

At the start of the meeting, the Respondents who were invited to present their view on the issue, were heard.

The Advocate of the Respondents who also was present, gave the following verbal submission:-

1. That the Respondents were granted permission to cut trees.
2. That the land in question has not been identified as Forests by the two State Level Expert Committees.
3. That girths of the logs appearing in the Panchanama are very small and show that they do not conform to the definition of trees.
4. That the land does not become a forest merely because some forest officer says that it is a forest.
5. That the report of Dr. Ashok Josh proves that the land in question is not a forest.
6. That the Forest Officer who accompanied the Members of Town & Country Planning Board while instructing the land in question, has not come out with objection decided to be a non forest; the land in question, being in settlement zone, is not a forest.

The Advocate was requested to submit his above views in writing within two or three days.

In the course of the meeting it was further decided to also call the petitioners to hear their views. Accordingly it was decided to send letter to the Petitioners, to be present in the next meeting and submit their views.

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388 478

In the course of the meeting it was further decided to also call the petitioners to hear their views. Accordingly it was decided to send letter to the Petitioners, to be present in the next meeting and submit their views.

The Chairman requested the Member Secretary to submit the prints of the photographs taken during the visit to the site on 7/11/2006

Finally it was decided to have next meeting on 21/11/2006, 27/11/2006 & 4/12/2006.

1) Dr. H. Y. Karapurkar

2) Shri C.A. Reddy
Conservator of Forests.

3) Shri F.X. Araujo,
Dy. Conservator of Forests, North Goa Division.

4) Shri M. K. Biddi,
Dy. Conservator of Forests, South Goa Division.

5) Shri M. V. Karkhanis
Asst. Conservator of Forests (Legal Cell)

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MINUTES OF THE 6TH MEETING OF THE COMMITTEE
HELD ON 21/11/2006

The Petitioners were requested to attend this meeting and give their views before the Committee Members. Accordingly, a written statement was submitted by Advocate Norma Alvares, the Legal Advisor, on behalf of the Petitioners.

The Legal Advisor explained verbally the main points referred to in the statement presented to the Committee.The main points highlighted are as follows:-

1. The Range Forest Officer had reported in November 1996 under the Tree Preservation Act, that the FCA is applicable to the Forest land in survey number 100/0.

2. On14/11/1996 DCF, North, Ponda permitted 23 trees in the property to be felled saying that the applicant is liable to legal action if he divert the land to forestry purpose.

3. The Panchanama has a list of the felled trees and the standing trees. They indicate that it was not a deliberately made plantation. It was natural growth of trees and plants come up at random.

4. 609 trees felled, 196 is standing and 15000 bamboos together fit into the definition of "Trees" as per the Indian Forest Act.

5. DCF prosecuted the owner saying, " it was invaluable dry deciduous forests serving as an important watershed for Carambolim Lake and its destruction would be detrimental to the area.

6. Forest Officers have the expertise of recognizing forest whether vegetation on a particular land is forest or not.

7. A Range Forest Officer, a Dy. Conservator of Forests, another Dy. Conservator of Forests, a Conservator of Forests and a Chief Conservator of Forests have described the land as forests independently at different

Incomplete

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9. The Chief Conservator of Forests Affidavit dated 13/12/2002 in this Petition says that the forest land fulfills the criteria of being identified as a private forests.

10. The land under Survey no.100/0 is full with trees, underwood, brushwood, climbers, bamboos and various creepers as undergrowth, which together make it only a forest.

11. As to Dr. Ashok Joshi's report :-

(a) It is lacking in understanding of what a forest is.

(b) Page 337 of it casually mentions about idea of bamboo plantation. The Respondent has never mentioned this prior to Dr. Joshi's report. Dr. Joshi does not give any evidence to back the idea.

The report tries to indicate that it is a poor quality forest, thus directly admitting that it is a forest though of no grade.

(c) Page 344 of the report mentions that trees of Sanvar, Pangara and Bhillamaad are found in deserts, which is not a fact, as these trees are found in forests of Goa and Goa is not a desert.

(d) On page 338 Dr. Joshi admits that they are all trees, of whatever nature and age.

(e) Page 340 of the report, mentions about the Gazettier of Goa, giving list of 52 tree species. The Gazettier is not the final and conclusive forest document. Forest Officers of Goa Forest Department have brought out flora of Goa forests listing therein 98 plants species.

(f) Page 343 of the report shows that Dr. Joshi has totally misunderstood the Panchanama.

Further, the Legal Advisor submitted to the Committee a write-up about all what she had verbally put up.

After the Petitioners left, the Committee continued with the meeting to discuss various issues.

Cont....3/-

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The Chairman expressed that the Committee is now in a position to take up drafting of the Report, as all the basic details have been collected. The DCF, North Shri Araujo requested that he may be furnished certain information to be able to start drafting report, which was agreed to.

The next meeting is decided to held on 27/11/2006.

1) Dr. H. Y. Karapurkar

2) Shri C.A. Reddy
Conservator of Forests.

3) Shri F.X. Araujo,
Dy. Conservator of Forests, North Goa Division.

4) Shri M. K. Biddi,
Dy. Conservator of Forests, South Goa Division.

5) Shri M. V. Karkhanis
Asst. Conservator of Forests, Legal Cell.

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MINUTES OF THE 7TH MEETING OF THE COMMITTEE

HELD ON 27/11/2006

Only the following members attended the Meeting:-

1) Shri H. Y. Karapurkar, Chairman

2) Shri F.X. Araujo, Dy. Conservator of Forests, North Goa Division.

Besides, Shri Karkhanis, Asst. Conservator of Forests (Legal Cell) also attended the meeting. As decided in the earlier meeting on 21/11/2006,the issues of drafting of the report was taken up. Certain documents required such as statements given by the Petitioners as well as the Respondents alongwith other documents like, RFO's original report DCF(N) tree feeling permission, its conditions, indemnity Bond given by the licensee, photo interpretation report of Shri S. K. Khanolkar, DCF(N),Ponda in respect of the Aerial Photographs ,Photo prints of the snap taken of the site as existing on 14/11/2006, conviction order of JMFC-Panaji, complained filed by DCF (N) with the JMFC-Panaji etc., have been decided to be handed over to DCF (N), the Member Secretary.

The Member Secretary Shri F. X. Araujo has been given the copies of minutes of all the meetings held till date. The minutes of the two field visits made were also given. The documents mentioned in the above para are also handed over to the Member Secretary.

Next meeting shall be on 6th December 2006.

1) Shri H. Y. Karapurkar,
Chairman.

2) Shri F.X. Araujo,
Dy. Conservator of Forests, North Goa Division.

3) Shri M. V. Karkhanis
Asst. Conservator of Forests, Legal Cell.

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14/10/2006

Details of Field visit to the site on 14/10/2006.

As decided in the first meeting, a field visit was made to the site by all four members plus Asst. Conservator of Forests, Shri Karkhanis.

Shri Karkhanis showed us the boundaries of the plot. The land in question is a hilly terrain with southern aspect, having steep slope intercrossed by narrow tar roads indicating division of the whole plot into sub plots. The vegetation by and large is consisting of three to four years old coppice growth of wild forest plants with lot of bamboo's grown which have sprouted again after initial clearance.

There are a few stubble /stumps of felled trees seen. At the lowermost level three bungalows have been constructed which are occupied

Further down a huge Housing Complex is in the final stage of completion consisting a few buildings which are just outside the plot under study. On the top southern boundary of the plot which was more or less flat, a strong stonewall fencing is being reconstructed where some labourers were at work.

There is need to mark these observations on the Map of the land to indicate, probably from earlier correspondence, the type of plantation that existed in the plot.

These details will be taken up for further discussion on the matter in the next meeting fixed to be held on 19.10.2006 at 3.30 p.m. in the Chamber of the Conservator of Forests.

Exhibit R-2 94C 93

Was Report manufactured in the office?

NO. 4-51-97/CONV-TIS/Approval/RB/22
Office of the Collector,
North Goa District,
(Revenue Branch),
Panaji-Goa.

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~~(119)~~

Dated:- 13th March, 2000.

- SITE INSPECTION REPORT-

Why we find office not take?

(6) A&B

Subject:-Conversion of land from one purpose to another under Survey No.100/1 of Village Ella/Tiswadi Taluka.

The site inspection of the above land proposed for conversion has been carried out by the Deputy Collector (Revenue) Collectorate of North Goa District, Panaji on 13.3.2000 alongwith the Surveyor attached to the Collectorate North Shri C.J. Braganza and Shri Nathubhai representative of Shri Satish V. Bhandari & others was present at the site inspection who showed the location of the site proposed to be converted.

The land under conversion is situated at Ella village of Tiswadi Taluka comprising an area of 76,900 sq.mts. falling in survey No.100/1.

Classificationwise details of the land proposed for conversion, it is a max garden and slightly sloppy on the Northern side. In the area to be converted there are two structures and consists of 1)Teakwood trees-3; 2)Mango trees-3; 3)Siras trees-2; 4)Tamarind tree-1; 5)Other trees - 7; besides bamboos and bananas plantation.

Dempo

16 here

It is bounded on the North by Survey No.90 & 99; On the South by Survey No.101/1 and 102/1;& 103/1; on the East by Survey No.104; on the West by Survey No.99 & 98/2.

During the course of site inspection Deputy Collector (Revenue) Collectorate of North Goa, Panaji has directed to the representative Shri Nathurbhai to fix the boundary on the Eastern side and clear the bushes grown alongwith the surrounding boundaries and also demarcate access road by fixing the boundary stones along the proposed conversion

The Deputy Collector (Revenue) also issued the following instruction on the site :-

(1)The development of the land should be submitted and strictly adhered as per the condition laid down by the Town and Country Planning Department.

Cont.....2

 Why forest trees. 92/C 94 (121)

(2)No forest trees shall be felled without the prior permission is obtained from Authority concerned i.e. Forest Department and double number of trees planted in its place.

(3)No hill cutting to be done.

(4)Any mundkar/tenancy rights will have to be protected.

(5)Landscaping to be done during development of the land.

Field Surveyor :

Deputy Collector(Revenue) :

Did he not count forest trees & only counted garden trees ?

So from 100 trees in 1 ha. in 1996 we have 16 trees on 7 ha. in 2000.

Trees didn't disappear 609 forest trees felled in 2001

No. CNV/TIS/15/2000

Government of Goa, Daman and Diu
OFFICE OF THE DEPUTY COLLECTOR &S.D.O.
PANAJI - GOA.
Dated: 4 /4/2000

Read: Application of Heirs of Premavati V. Bhandari, ShriDatta V. Bhandari & Others, all r/by P.A.H. Shri Satish V. Bhandari dated 10-2-2000 under Sub-Section (1) of Section 32 of the Goa, Daman&Diu, Land Revenue Code, 1968.

SANAD

SCHEDULE—II

[See Rule 7 of the Goa, Daman and Diu Land Revenue (Conversion of use of land and non-agricultural Assessment) Rules, 1969]

Whereas an application has been made to the Collector of Goa (hereinafter referred to as "the Collector" which expression shall include any Officer whom the Collector shall appoint to exercise and perform his powers and duties under this grant) under Section 32 of the Goa, Daman and Diu Land Revenue Code, 1968 (hereinafter referred to as "the said Code" which expression shall, where the context so admits include the rules and orders thereunder) by ~~Shri/Smt~~ Heirs of Premavati Vinayak Bhandari, Shri Datta V. Bhandari & Others all represented by P.A.H. Shri Satiesh V. Bhandari r/o Dotor Bhat, Opp. Pinto Service Station Old - Goa. being the occupant of the plot registered under ..... known as ..... " situated at ...ELLA - TISWADI..... registered under No. Survey No. 100/0 ..... (hereinafter referred to as "the applicant" which expression shall, where the context so admits include his/her heirs, executors, administrators and assigns) for the permission to use the plots of land (hereinafter referred to as the "said plot" described in the Appendix I hereto, forming a part of ..Suirvey No. 100/0..... admeasuring ..76.900sq.mts..... square metres be the same a little more or less for the purpose of ..RESIDENTIAL.....

Now, this is to certify that the permission to use for the said plots is hereby granted, subject to the provisions of the said Code, and rules thereunder, and on the following conditions, namely:—

1. *Levelling and clearing of the land*—The applicant shall be bound to level and clear the land sufficiently to render suitable for the particular non-agricultural purpose for which the permission is granted to prevent insanitary conditions.

2. *Assesment*.—The Applicant shall pay the non-agricultural assessment when fixed by the Collector under the said Code and rules thereunder with effect from the date of this sanad.

3. *Use*—The applicant shall not use the said land and building erected or to be erected thereon for any purpose other than residential/~~Industrial~~/any other non-agricultural purpose, without the previous sanction of the Collector.

4. *Building time limit*—The applicant shall within one year from the date hereof, commence on the said plot construction of building of a substantial and permanent description, failing which unless the said period is extended by the Collector from time to time, the permission granted shall be deemed to have lapsed.

5. *Liability for rates*—The applicant shall pay all taxes, rates and cesses leviable on the said land.

6. *Penalty clause*—(a) if the applicant contravenes any of the foregoing conditions the Collector may, without prejudice to any other penalty to which the applicant may be liable under the provisions of the said Code continue the said plot in the occupation of the applicant on payment of such fine and assessment as he may direct.

(b) Notwithstanding anything contained in sub-clause (a) it shall be lawful for the Collector to direct the removal or alteration of any building or structure erected or use contrary to the provisions of this grant within such time as specified in that behalf by the Collector, and on such removal or alteration not being carried out and recover the cost of carrying out the same from the applicant as an arrears of land revenue.

7. *Code provisions applicable.*—Save as herein provided the grant shall be subject to the provisions of the said Code and rules thereunder.

APPENDIX — 1

Length and Breadth		Total Superficial Area	Forming (part of) Survey No. or Hissa No.	BOUNDARIES	Remarks
North to South	East to West			North, South, East and West	
1	2	3	4	5	6
360mts.	240mts.	76900sq. mts.	100/1	North:-Survey No.90,99. South:-Survey No.101,102/1 &103/1. East :-Survey No.104 West :-Survey No.99,98/2.	Land in question is mixed garden having 2Temporary Structure an area 270sq. mts. & Consisting following trees in the plot 1.Teak3 2.Mangos-3 3.Siras-2 4.Tamrind-1 5.Cashew-7 6.others-5 Note:-the site plan tallis with our cadastal survey plan & found correct.

CONDITIONS:-

1. The development of land should be carried out as perrguide lines of Town & Country Planning Dept.& Local Panchyat.
2. The existing trees if any shall not be cut unless the authority concerned i.e. the permission from the Forest Dept. obtained and double number of trees shall be planted in the area applied for conversion. 3)The gradiant of the land shall be preserved and no hill cutting to be done. 4) All Mundkarial rightsto be safeguarded and any dispute arising in future would be the responsibility of the concerned landlord.
5) Landscaping to be done during development of the land.
6) Applicant has paid the conversion fees amounting Rs.11,53,500/ vide Chalan No.53/99-2000 dated 24/3/2000.
7) Conversion has been approved by Town Planner under letter No.CIS/1937/ELL/2000-TCP/130 dated 21/2/2000.
8) Sanad is issued in view of Govt. Circular No.16-11-90-RDdated 4-7-1996.

In witness whereof the Collector of Goa, has hereunto set his hand and the seal of his Office, on behalf of the Administrator of Goa, Daman and Diu and the applicant Heirs of Premavati Vinayak Bhandare, Shri Datta V. Bhandare, r/by B.A.H. Shri Satish V. Bhandare, r/o. Ella Old-Goa. here also hereunto set his hand this 4th day of April 2000 xxxx

Satish V. Bh
(Signature of the applicant)

(P. Krishnamurthy)
Deputy Collector and
Sub-Divisional Officer
Panaji Sub-Division
Panaji-Goa.

D.Y. COLLECTOR & S.D.O. PANAJI SUB-DIV.

Signature and designation of Witnesses

1. Shaikh Shukur (Retired H.C)
2. Cautaro J. Dragna (P.A.)

Signature and designation of Witnesses

1. Shaikh Shukur
2. Cataro J. Dragna

We declare that Shri/Smt. Heirs of Premavati V.Bhandare, Shri Datta Bhandari r/by P.A.H. Shri Satish V. Bhandare, r/o.Dotor Bhat,opp.Pinto Service Station Old Goa. who has signed this Sanad is, to our personal knowledge, the person he/she represents himself to be, and that he/she has affixed his/her signature hereto in our presence.

Copy to:-

1. The Mamlatdar of Tiswadi Taluka Panaji - Goa.
2. The Town & Country Planning Dept. Panaji - Goa.
3. The Inspector of Survey & Land Records, Panaji - Goa.
4. The Sarpanch of Village Panchyat Ella Old Goa Tiswadi - Goa.
5. O|C.

1. Shaikh Shukur
2. Cautaro J. Dragna

G.P.P. Press, Panaji-Goa — 2010/30.000 — 8/1987

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RANGE FOREST OFFICER
Inward no. 2254
L. No. _____ Pg. No. 3

FORM – B

(See Rule 4-1)

To,
The ~~Range Officer~~ 2254 TISWADI
DY. CONSERVATOR OF FORESTS
NORTH GOA DIVISION
PONDA GOA

Sir,

I apply for grant of permission for felling tree/s located in the village ELLA DOTOR BHAT Taluka TISWADI, District GOA. I furnish below the following details in support of my application.

i) Applicant's name and address: SHRI. SATISH VINAYAK BHADARI HNo 171 DOTOR-BHAT-ELLA. TIS GOA OWNER

ii) Name and address of the Owner of the property (if different from applicant): -"-

iii) Title of the applicant i.e. whether owner / occupant of the property etc:

iv) Name and serial No. of property: DOTOR-BHAT-ELLA - Sy NO 100/0

v) Total area of the property with description of the boundaries: 7-69.00 Ha. Ac

vi) Total No. of trees (species wise) whose trunk of body is not less than 5 cms. diameter at a height of 30 cms. from the ground and whose height is not less than one meter from the ground. (Details of total No. of trees existing in the property separate list may be attached) including trees marked for felling:

Teak 200, Mango 30, Bombax 200, Jackfruit 500, Coconut 300, Cashew 30

vii) The exact area (in sq. meters) from which felling of trees for which permit is sought (description of the boundaries): 7 ha 7.69.00 Sq

viii) Total No. of trees to be felled: 60 Nos *

ix) Trees to be felled are serially numbered in paint their girth measured at a height of 1.35 meters from ground level and their details species wise are ..... yes

x) Purpose for which the felling of trees are intended:

xi) Intended use of felled trees (e.g. for sale, for domestic etc.): Domestic use, sale

xii) Intended use of land after felling of trees:

xiii) Number and species of trees intended to be planted after felling (give details of arrangements for planting and protecting trees): Cashew plants

xiv) Name/s address/es of the owner/ /occupants of adjoining property/ies:

* List of Trees — pg 46

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I enclose an affidavit and below mentioned papers in support of my application.

DECLARATION

I hereby declare that I shall satisfy and abide by such terms and conditions of permission as may be specified therein.

Place : Panjim

Dated : 12-9-96

Applicant's Signature

Attested copies of :

1. Property / occupancy documents.
2. Plan of the property showing the survey number.
3. Enumeration list (duly signed by the applicant).
4. Boundary list (duly signed by the applicant).
5. Extract index of land record issued by the Mamlatdar.
6. 'No Objection Certificate' from Administrator of Comunidades.
7. 'No Objection Certificate' from adjoining property.

Govt. Ptg. Press, Panaji-Goa -- 657 10,000 2/1993

Enumeration list of the trees requested for felling from Sy no. 100/0 of Ella village, Teswadi taluk

Sl. no	Species	Girth	Height	Reasons
4.	Teak	0.80	7.00	discased
5.	do	1.02	12.00	Healthy
6.	do	1.06	15.00	Healthy
7-A	Jack	1.50	10.00	Discased
7-B	do	1.60	9.00	Discased
8.	Teak	1.00	12.00	immature
11.	Jack	1.55	9.00	Affected
12.	Teak	1.15	12.00	Healthy
14.	Tamrind	1.40	10.00	Hollow at base
19.	Tirpal	1.00	8.00	Covered with climber
20.	Sirus	1.20	10.00	Healthy
21.	Teak	0.85	10.00	Hollow at base
22.	do	1.10	12.00	Healthy
23.	Moi	1.50	8.00	Healthy
24.	Pangaro	1.50	12.00	Healthy
25.	Tamrind	1.80	10.00	matured
26.	Mango	1.90	12.00	Top discased
27.	do	2.10	15.00	matured
28.	Gabon	1.00	5.00	Suppressed, affected by climber
29.	Mango	2.10	15.00	matured, covered with climber
30.	Pongaro	1.60	12.00	Healthy
31.	Irai	1.90	15.00	matured
34.	Pongaro	1.08	8.00	Healthy
35.	Mango	1.65	12.00	Healthy
36.	Teak	0.78	10.00	defective at base
37.	do	1.10	12.00	Healthy
41.	Patpanas	1.40	12.00	Healthy
42.	Jack	2.00	12.00	discased
43.	Moi	0.77	6.00	Top broken
48	Jamun	1.50	12.00	Immature
49	Sissum Twigs	1.55	12.00	matured
50.	Mirjo	1.60	12.00	matured
51.	Karanj	2.00	14.00	Healthy

6/CC

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Contd

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Tree No	Species	Girth	Height	
52-A	Jack	2.00 m	12.00	Matured
52-B	do	1.50 m	10.00	Healthy
55	Teak	1.70 m	10.00	Healthy
56	Mango	1.80 m	12.00	Matured
57	Mango	1.80	12.00	Healthy
58	Teak	1.40	12.00	Matured

Sy. of Old

Stubards
RFO, Panaji

(23)

Sy. N of E Old